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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORDS OF THE 914th TO 937th MEETINGS

Held at the Palais des Nations, Geneva,
from 5 to 23 August 1991

Chairman: Mr. SHAHI

Rapporteur: Mr. BANTON

The list of members attending the session may be found in the report of the Committee to the General Assembly (*Official Records of the General Assembly, Forty-sixth Session, Supplement No. 18* (A/46/18), paras. 6 and 7).

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 914th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 1991, at 10.30 a.m.

Chairman: Mr. SHAHI

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Opening of the session

Adoption of the agenda

The meeting was called to order at 10.50 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fortieth session of the Committee on the Elimination of Racial Discrimination, and welcomed the members of the Committee.

2. Referring initially to the annotated agenda (CERD/C/214), and specifically to item 3 "Consideration of reports, comments and information submitted by States parties under article 9 of the Convention", the Chairman drew the attention of the Committee to the fact that it must, during the session, review the implementation of the Convention by 13 States parties whose reports were overdue. A timetable for that was included in the annotated provisional agenda. The secretariat had moreover just distributed a provisional programme of work as a document without a symbol; the timetable in it corresponded to that in the provisional agenda, except with regard to Australia, whose report had been received after the provisional agenda had been issued. The programme would be studied by the Bureau after the current meeting.

3. He recalled that, at its two previous sessions, the Committee had left pending certain questions that it must take up again at the current session, in connection with items 2, 3 and 6 of the provisional agenda, as indicated in the provisional programme of work. He recalled in particular that, at its thirty-ninth session, the Committee had not been able to deal with the consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applied, in conformity with article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination.

4. In that connection, the Committee had approved, at its thirty-eighth session, the appointment of the members of its three working groups to examine the documentation submitted to it under article 15 of the Convention and to report on their findings. The working groups consisted of the following members: Working Group on Atlantic Ocean and Caribbean Territories, including Gibraltar: Mr. Wolfrum, Mr. Reshetov, Mr. Vidas and Mr. Foighel, with Mr. Yutzis as Convener; Working Group on Pacific and Indian Ocean Territories: Mr. Lechuga Hevia, Mr. Garvalov, Mr. Rhenanusegura and Mr. Song, with Mr. Sherifis as Convener; Working Group on African Territories: Mr. Ahmadu, Mr. de Gouttes and Mr. Ferrero Costa, with Mr. Lamptey as Convener. As Mr. Sherifis was absent, the Chairman suggested that he should be replaced by Mr. Garvalov.

5. During the thirty-ninth session, the working groups had continued to function with the same members. The Committee had also agreed that Mrs. Sadiq Ali would serve as Chairperson of the Conveners of the three working groups. He asked the Conveners to meet after the current meeting in order to draw up a programme of work on the question.

6. He went on to state that during the current session, the Committee would have to consider its contribution to preparations for the World Conference on Human Rights, whose Preparatory Committee would meet from 9 to 13 September. That question would be reviewed by the Bureau, but would then be submitted to the Committee, which could hold an informal meeting to exchange ideas on the subject.

7. He also drew the attention of the Committee to document CERD/C/215, which indicated the situation with regard to the submission of reports by States parties under article 9, paragraph 1, of the Convention.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CERD/C/214)

8. The CHAIRMAN noted that Committee members had no observations to make regarding the provisional agenda as set out in document CERD/C/214.

The agenda was adopted.

The meeting rose at 11 a.m.

CERD/C/SR.915
12 September 1991

ENGLISH
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 915th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. LAMPTEY

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Statement by the Under-Secretary-General for Human Rights

Organization of work

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention:

Sixth, seventh and eighth periodic reports of Australia

The meeting was called to order at 10.15 a.m.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the current session of the Committee on the Elimination of Racial Discrimination would differ from previous sessions in two ways. Firstly, the Committee would be holding a joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities and, secondly, it had adopted an innovative approach to the problem of States parties whose periodic reports were long overdue.

2. The fight against discrimination was central to the human rights work of the United Nations. Both the Charter of the United Nations and the Universal Declaration of Human Rights underscored the principle of equal rights for all, without distinction of any kind, such as race. One of the principal focuses of the Organization's action to promote equality and combat discrimination in all its forms had been the fight against apartheid. The Ad Hoc Working Group of Experts on Southern Africa within the Centre for Human Rights was keeping a vigilant eye on developments in South Africa and the Commission on Human Rights was continuing its action against apartheid.

3. On the moral or philosophical level, the activities of the international community, particularly the work of the Sub-Commission, had resulted in the refutation of the pseudo-scientific theory of racism. No rational human being could maintain today that colour or "race" had anything to do with individual potential or achievements. However, although the "scientific" basis of racism had collapsed, much remained to be done in dealing with the false beliefs it had left behind.

4. The efforts of the international community had begun to bear fruit in another area, namely, the destruction of any semblance of legitimacy in the policy of separate development or apartheid, and there was reason to believe, despite the difficulties, that a new South Africa would become a reality.

5. The Committee would have several issues before it at the current session - its sources of information, identification of its contribution to the preparatory activities for the 1993 World Conference on Human Rights; and consideration of the programme of action for the Third Decade to Combat Racism and Racial Discrimination.

6. He welcomed the fact that the Committee's current session marked the first time since 1987 that it had been able to hold two sessions in the same year. It was to be hoped that that practice would be considered the rule and not an exception. He recalled that the General Assembly had requested the Secretary-General in December 1990 to seek the agreement of States parties to the Convention to the establishment of a "contingency reserve fund" to ensure adequate funding for the Committee's activities. Although no decision on the matter could be taken before the meeting of States parties in January 1992, the prospects for putting the Committee on a firmer financial basis seemed promising.

7. Regarding other significant developments since the Committee's previous session, on 13 May 1991, Zimbabwe had deposited its instrument of accession to the Convention, bringing the total number of States parties to 129.

8. The Committee's revised study entitled "The First Twenty Years: Progress Report of the Committee on the Elimination of Racial Discrimination" had now gone to press, and the Centre had published Fact Sheet No. 12 in the "Human Rights" series, entitled "The Committee on the Elimination of Racial Discrimination", an English copy of which had been distributed to all members of the Committee. It was soon to be issued in the other official languages. Committee members had also received copies in English of the Manual on Human Rights Reporting, which had recently been published jointly by the Centre for Human Rights and the United Nations Institute for Training and Research (UNITAR). That publication would also be sent to the States parties as soon as the other language versions were available. Finally, the consolidated guidelines for reporting by States parties which had been adopted by the Committee at its previous session in March 1991 had been sent to all States parties, and the States concerned had been requested to submit the required information in a "core document" by the end of 1991.

9. Concerning the status of other human rights instruments and the activities of other bodies responsible for their implementation, he was glad to report that the Second Optional Protocol to the International Covenant on Civil and Political Rights had entered into force on 11 July 1991, three months after receipt of the tenth instrument of ratification. As the Committee was aware, the object of the Protocol was the abolition of the death penalty, which was so often applied in a racially discriminatory manner.

10. The Centre had also organized, in May 1991, an informal meeting of the 10 members of the most recently established human rights treaty body, the Committee on the Rights of the Child. The purpose of the meeting had been to brief members on matters such as the relationship of the treaty bodies to one another and to other human rights bodies, and cooperation between that Committee and the specialized agencies, the United Nations Children's Fund (UNICEF), other United Nations bodies and other concerned intergovernmental and non-governmental organizations. The Committee on the Rights of the Child would hold its first formal session from 30 September to 18 October 1991 and the number of States parties to the Convention on the Rights of the Child already stood at 93.

11. The steadily increasing number of international human rights instruments and the already large number of States parties to those instruments had resulted in growing demands being placed on the Centre by the relevant bodies. In accordance with resolutions adopted by the Commission on Human Rights and the General Assembly, the Secretary-General would soon be inviting States to make voluntary contributions to cover the cost of installing a computer system and setting up a database.

12. Activities for the Second Decade to Combat Racism and Racial Discrimination continued to yield notable results. As Coordinator for Decade-related activities, he was pleased to observe that the document entitled "Global Compilation of National Legislation Against Racial Discrimination" had been published and that the Secretariat had provided each expert with a copy. The related and equally important study on model national

legislation to serve as a guide to Governments in the enactment of further legislation against racial discrimination had been finalized and submitted to the Committee for consideration at the current session.

13. The many activities planned as part of the Second Decade, which was to be completed in 1993, included the preparation of a handbook on recourse procedures for victims of racism and racial discrimination. The Centre for Human Rights was also conducting a study of the effects of racial discrimination in the fields of education, training and employment and on the children of minorities, particularly the children of migrant workers.

14. As to the agenda of the joint meeting between the Committee and the Sub-Commission, the following items might be included: ways and means of coordinating action in combating racism and racial discrimination; mutual assistance for strengthening action undertaken to combat racism and racial discrimination; emerging trends and problems involving racism and racial discrimination; and potential conflicts between the right to protection from racial discrimination and certain other fundamental rights and freedoms.

15. Since the Committee's previous session in March 1991, there had been some signs of further progress towards dismantling the system of apartheid. In order to expedite the process, the Centre for Human Rights had organized, in June 1991, in cooperation with the World Council of Churches, a workshop during which the proposed new South African constitution had been discussed, as had the way in which it might reflect the provisions of the various United Nations human rights instruments. In that connection, he thanked Mr. Foighel for having agreed at short notice to take part in the workshop and to present the topic of the constitutional protection of the rights guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination.

16. Also in June 1991, under the advisory services and technical assistance programme of the Centre for Human Rights, specialists had been despatched to Mongolia on a two-week mission to help the national authorities to draft a new constitution reflecting United Nations human rights standards. The Mongolian authorities had been grateful for the guidance given by the Committee in dealing with the strains of a multi-ethnic society.

17. Finally, he expressed concern that, at a time when calls for peace and freedom were heard in every part of the world, hatred and racism continued to prevail. The experience of the Committee on the Elimination of Racial Discrimination in overcoming racism and racial discrimination was being called upon to guide peoples and Governments towards achieving a just and harmonious society. In conclusion, he reaffirmed the readiness of the Centre for Human Rights to assist the Committee in every possible way in order to enable it to bring its deliberations to a successful conclusion.

18. Mr. BANTON pointed out that, at their third meeting, the persons chairing the human rights treaty bodies had recommended that United Nations information centres in the various countries should make the work of those bodies better known. That could only be achieved, however, if a publicity campaign was organized in the countries concerned through non-governmental organizations or other bodies. He asked what measures had been taken to carry out that very constructive recommendation.

19. Mr. ABOUL-NASR, supporting the point raised by Mr. Banton, said that the distribution by United Nations information centres of documents put out by the Centre for Human Rights fell far short of the care that had gone into their preparation. They were not reaching the public and action should be taken to ensure that the United Nations information centres in the various capitals made greater efforts in that direction.

20. Mr. MARTENSON (Under-Secretary-General for Human Rights) said he, too, attached great importance to the recommendation made at the third meeting of the human rights treaty bodies regarding United Nations information centres. The Centre for Human Rights was attempting to make the Information Service more aware of the active role that information centres ought to play in spearheading United Nations action in the field. He was drawing up recommendations and doing everything in his power to ensure that United Nations literature was widely circulated.

21. The CHAIRMAN thanked Mr. Martenson, in his own name and on behalf of the Committee, for his attendance at the Committee's session and his contribution to its work.

ORGANIZATION OF WORK

22. The CHAIRMAN reporting to the Committee on discussions which the Bureau had just held on organization of the work of the current session, said that three States parties - Belgium, Guinea and Togo - had requested that consideration of their reports should be deferred. In the opinion of the Bureau, the Committee could accede to Belgium's request, inasmuch as it had undertaken to submit its report before the end of the year, so that the report could be considered at the next session. On the other hand, the Bureau had taken the view that the consideration of the reports from Guinea and Togo should go ahead, even though neither had sent a delegation, for two reasons: the Committee's conclusions on reports which were several years overdue might serve the countries concerned as a guide in preparing their next reports and would also act as a reminder of the Committee's concern that States should meet their obligations.

It was so decided.

23. The CHAIRMAN pointed out that since the examination of the report from Belgium, which was to have taken place at the afternoon meeting of 14 August 1991, had been deferred, a meeting had become available for the consideration of item 6 on the Second Decade to Combat Racism and Racial Discrimination. According to the revised programme of work, the item would also be examined at the afternoon meeting of Friday, 16 August 1991. At those two meetings the Committee would therefore consider the draft model legislation, the "model report" and the Committee's contribution to the work of the Preparatory Committee for the World Conference on Human Rights. The revised programme of work also contained items which had been postponed from the last session and were listed in order of priority.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3)

Sixth, seventh and eighth periodic reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2)

24. The CHAIRMAN said that the Committee had before it the sixth periodic report of Australia (CERD/C/146/Add.3) and its eighth periodic report (CERD/C/194/Add.2), a combination of the seventh and eighth reports, which had been due on 30 October 1988 and 30 October 1990 respectively.

At the invitation of the Chairman, Mr. Tickner, Mr. Walker, Mr. Gray, Mr. Barker, Mr. Chapman, Mr. Thomson, Ms. Blair, Ms. Schmider and Mr. Milner (Australia) took places at the Committee table.

25. Mr. TICKNER (Australia), after expressing Australia's unequivocal support for the work of the Committee, said that his country was presenting three reports: the sixth report, for the period October 1984 to December 1986, which had been submitted in April 1989 (CERD/C/146/Add.3); and the consolidated seventh and eighth reports, covering the period up to October 1990 (CERD/C/194/Add.2). He would also be reporting in his opening statement on further developments which had occurred in late 1990 and during 1991. He gave an undertaking that the next report, due in 1992, would be submitted punctually.

26. Australia was an open book on human rights issues. The defence of those rights enjoyed cross-party support. The Commonwealth of Australia had a federal system of government, under which legislative and executive power was shared between the central Government and the constituent units of the Federation, namely the six self-governing States and two internal territories, which for all practical purposes exercised the same degree of self-government as the States. There were also a few external territories which had very small populations and which exercised more limited self-government. Treaties, including human rights instruments, required legislative implementation to be fully effective in Australian law. The Federal Parliament had power to legislate concerning external affairs, including the power to legislate for the implementation of treaties entered into by Australia. State and territory Governments also played an important role; most States had their own anti-discrimination legislation, including racial discrimination legislation, and proposals for such legislation was at various stages of development in the other two States and internal territories.

27. The Australian Government was committed to a policy of multiculturalism, which sought to achieve a more just society and to utilize the talents of all Australian residents, regardless of cultural background or country of origin. An Access and Equity Strategy had been initiated to that end in 1985 and in 1989 had been widened with the goal of eliminating all linguistic, cultural, religious and racial barriers and making government programmes and services available to all Australians. The first review of the Strategy's impact on Aboriginal and Torres Strait Islander people would take place in 1991.

28. Australia had a non-discriminatory immigration programme, and selection procedures did not breach any of the criteria of the Convention. They

reflected Australia's commitment to family reunion and to humanitarian concerns. Relative to its size, Australia's intake of refugees and displaced persons was amongst the highest in the world. In 1988/1989 and 1989/1990, its intake had spanned more than 30 nationalities from all affected regions of the world, demonstrating the non-discriminatory nature of the Government's policy. Immigrants were eligible for Australian citizenship after two years' residence, and citizenship was open to all without regard to their sex, marital status or nationality. Since the combined seventh and eighth reports had been completed, a new system for determining refugee status had been introduced in December 1990, providing for a right of review to a new body called the Refugee Status Review Committee. A representative of the Office of the United Nations High Commissioner for Refugees participated in an advisory capacity.

29. With regard to the significant changes that had occurred since the consideration of the fifth report, there was first of all the Aboriginal and Torres Strait Islander Commission (ATSIC). It had been established under legislation enacted by the Federal Parliament in 1989 and had commenced operations on 5 March 1990, replacing the previous Department of Aboriginal Affairs and the Aboriginal Development Commission. The structure of ATSIC was such that a body of elected Aboriginal and Torres Strait Islander people was for the first time able to determine programme priorities and the allocation of funding within the Aboriginal affairs portfolio. It was made up of 60 regional councils comprising some 780 democratically elected councillors. Its aims were to ensure the maximum participation of indigenous people in the formulation and implementation of government policies that affected them; to promote the concept of indigenous self-management and self-sufficiency; to further the economic, social and cultural development of indigenous people; and to ensure coordination in the formulation and implementation of all relevant policies and programmes without diminishing in any way the responsibilities of all Governments in Australia to provide services to indigenous communities.

30. The allocation of the $A 600 million budget administered by ATSIC was, beginning with the financial year 1991/1992, the statutory responsibility of the elected councillors and the Board of Commissioners. Despite the persistence of some cynicism, the balance of power between the Minister and the Aboriginal and Torres Strait Islander people had changed dramatically. ATSIC was a unique body in the field of indigenous affairs in that it combined representative, advisory and administrative processes in the one organization.

31. With regard to the report of the Royal Commission into Aboriginal Deaths in Custody, which had been introduced in Parliament in May 1991, the Commission had been initiated jointly by the national Government and the Governments of the States and territories in response to calls by Aboriginal and Torres Strait Islander people. It had investigated the deaths in custody between 1980 and 1989 of 88 male and 11 female Aboriginal people. The final report consisted of 11 volumes and included 339 recommendations aimed at addressing not only the circumstances of deaths in custody but all the major problems of discrimination faced by the Aboriginal and Torres Strait Islander people. The Commissioners had not found that any of the deaths had been the result of deliberate violence by police or prison officers. The large number had been due to the disproportionate number of Aboriginal people in custody.

32. The investigation had been extremely thorough. All relevant documents had been studied and the Royal Commission had been able to interview the majority of those whom it had wished to interview. Post-mortem reports had been reconsidered by eminent pathologists and the orders binding on custodians had also been critically examined. Hearings had been held in public; families of the deceased had been represented by legal counsel, to whom all documents had been made available. The Royal Commission had gone beyond most other such bodies in recommending further investigation of a number of cases to determine whether prosecutions were warranted. The recommendations were currently being examined by the public prosecuting authorities.

33. The Royal Commission had laid open the harshness and oppression experienced by many Aboriginal Australians. The average age of the Aboriginals who had died in prison had been only 29 years. Of the 99, 43 had experienced childhood separation from their natural families through intervention by State authorities, missions or other institutions; 83 had been unemployed at the date of their last detention; only 2 of the 99 had completed secondary schooling; 43 had been charged with an offence at or before the age of 15; 43 had been taken into custody in the period immediately before their deaths on matters directly related to the over-use of alcohol and, in the remaining cases, the Royal Commission had concluded that alcohol had been a contributing factor in their being taken into custody for the last time. The standard of health of the 99 had varied from poor to very bad.

34. The report had documented as never before the impact of European settlement on Australia's indigenous peoples, their dispossession and subordination within a dominant and often hostile society frequently motivated by self-interest, the development of racist attitudes both overt and hidden and the way in which such attitudes had become institutionalized in the practices of legal, educational, welfare and Aboriginal assistance authorities. He could not refer in detail to the 339 recommendations by the Royal Commission, but they were extremely comprehensive and were directed to a wide spectrum of programmes of national, State and territory Governments. As he had stated the previous year in the United Nations Working Group on Indigenous Populations, his Government was aware that the Working Group, Amnesty International and other non-governmental organizations would be monitoring the implementation of the Royal Commission's recommendations. In a very real sense the world was watching events in Australia.

35. In July 1991, a joint forum of federal and State ministers had been convened in Canberra to develop a coordinated national response to the recommendations of the Royal Commission by March 1992. He was submitting a copy of the report and recommendations of the Royal Commission for the information of members of the Committee. By the time Australia presented its next report, action on the recommendations should be significantly advanced and the report would provide comprehensive information on progress.

36. Another proposal for transforming relations between Australia's indigenous peoples and the wider community, which had met with the support of both, was the "process of reconciliation". The necessary legislative machinery would be put in place with the passage through the Australian Senate later that month of an Act to establish a Council for Aboriginal Reconciliation; the legislation had already been passed in the House of Representatives with the support of all the political parties. Where the

Aboriginal peoples were concerned, support had been forthcoming from ATSIC, the Aboriginal Coordinating Council in Queensland, the National Coalition of Aboriginal Organizations, the Torres Strait Islander Advisory Board and the Aboriginal and Islander Commission members of the Australian Council of Churches. Support for the proposal in the non-Aboriginal community had come from the churches, the Confederation of Australian Industry, the Australian Medical Association, the National Farmers Federation, the Federation of Ethnic Communities' Councils of Australia and many major companies and community organizations.

37. As Minister for Aboriginal Affairs, one of his objectives had been to eliminate political exploitation; he welcomed the fact that Mr. Michael Wooldridge, the shadow Minister for Aboriginal Affairs, had played an important role in achieving common ground in the Process of Reconciliation. Another government objective was to broaden the opportunity for dialogue between the Aboriginal and non-Aboriginal communities at the level of local government, the churches, the business community, the trade union movement and community organizations. The Council for Aboriginal Reconciliation would be chaired by an Aboriginal person, and the Aboriginal and Torres Strait Islander peoples would have a majority of the Council's 25 seats. Non-Aboriginal membership would represent the churches, trade unions, business, media and other major interest groups.

38. The reconciliation process contained three key elements: firstly, an ongoing and extensive public awareness and education campaign to promote a better understanding of Aboriginal history, culture and dispossession; secondly, a commitment, which the Government of Australia would seek to obtain from Governments at all levels, to cooperate in the reconciliation process in order progressively to address Aboriginal aspirations in the essential areas of land, housing, law and justice, cultural heritage, education, employment, health, economic development etc.; thirdly, the drafting of a formal document or documents on the basis of extensive consultations, in particular through the mechanism of ATSIC and indigenous community-based organizations.

39. He had already acknowledged that the health of the Aboriginal and Torres Strait Islander communities was of a standard that fell below that of other sectors of the community. Life expectancy was some 20 years lower than the average, and infant mortality was at least three times higher. The National Aboriginal Health Strategy, developed to combat that inexcusable situation, aimed to bring about a significant improvement in environmental health conditions in Aboriginal and Torres Strait Islander communities, establish new, and upgrade existing, health services controlled by the Aboriginal community, establish a National Office of Aboriginal Health within ATSIC, collect comprehensive statistical data on Aboriginal health and implement initiatives to prevent drug abuse. The Strategy required the active participation of the Aboriginal and Torres Strait Islander peoples through the regional councils of ATSIC, the Council of Aboriginal Health and tripartite forums to be established in all States and territories, the goal being to bring together representatives of indigenous communities, the State and territory Governments and the federal Government. Recommendation No. 271 of the Royal Commission dealt with the implementation of the National Aboriginal Health Strategy; with that recommendation in mind, the Commonwealth Government had recently committed itself to providing an additional $A 232 million over a five-year period to fund the first stages of the Strategy. It also sought to

secure contributions from the State and territory Governments. Lastly, the Department of Employment, Education and Training would work to train indigenous persons in building and maintaining an essential community infrastructure.

40. The Australian reports outlined the broad powers of the Commonwealth Human Rights and Equal Opportunity Commission, which had overall responsibility for implementing the Racial Discrimination Act of 1975. Apart from its other functions, the Commission handled individual complaints and conducted public inquiries into human rights matters. On issues of racial discrimination, it had completed two major public inquiries, one focusing on the social and material conditions of the Aboriginal communities in three towns along the Queensland/New South Wales border and the other on acts of racial violence directed against persons or organizations advocating non-racist policies. The report of the Commission on the second inquiry had been submitted to the Commonwealth Parliament on 18 April 1991, and, significantly, the Commission had found that the perpetrators of the violence were frequently police officers. That situation, a feature of Australia's history, was unacceptable, and it was therefore essential to ensure a vigorous implementation of existing legislation and to afford the victims better protection and redress. The Commission had recommended enacting legislation to make racist violence and intimidation a federal offence and amending the Racial Discrimination Act to make incitement of racial hostility unlawful and to give the Commission jurisdiction to hear and investigate complaints on that basis. The Australian Government was currently examining those and other recommendations.

41. As part of the reconciliation initiative, the National Government had announced the following proposals in the area of education: the development of consistent and appropriate Aboriginal studies curricula for all Australian schools (from kindergarten to year 12); the creation of coherent teacher-training courses to promote a better understanding among teachers of Aboriginal questions and greater sensitivity towards Aboriginal and Torres Strait Islander students; development of a sister-schools scheme to encourage direct contacts between students; and the launching of local school strategies in schools with Aboriginal and non-Aboriginal students under the Aboriginal Student Support and Parent Awareness Scheme, in order to foster a better understanding of the local Aboriginal communities.

42. He was pleased to announce that his Government had recently approved Australia's accession to the First Optional Protocol to the International Covenant on Civil and Political Rights. Accession to the Protocol had been one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It was a manifestation of Australia's conviction that human rights were a matter of international concern and should be regarded as an affirmation of its willingness to be scrutinized on its human rights performance and to enter into a frank dialogue on those issues.

43. The CHAIRMAN thanked the representative of Australia for his detailed and frank oral presentation of his country's reports. Before inviting the members of the Committee to ask questions, he gave the floor to the country rapporteur for Australia.

44. Mr. WOLFRUM expressed appreciation of the oral presentation, which had provided a wealth of information. The Australian representative had stated that Australia was an open book on human rights issues, and the Committee could therefore expect a fruitful dialogue. It would, however, have been preferable if some of the information which the Australian representative had just given the Committee had been communicated earlier. He considered that the sixth, seventh and eighth reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2) were in keeping with the Committee's guidelines.

45. With regard to the demographic composition of the Australian population, he noted that, according to the most recent census, that of 1986, the next being due in July 1991, 3,477,400 persons, or 22 per cent of the total population of 15,602,000, had been born overseas. According to the responses to a question on ancestry, as self-identified by respondents, the demographic composition was as follows: Aboriginal - 1.0 per cent; Chinese - 1.1 per cent; Dutch - 1.4 per cent; German - 2.4 per cent; Scottish - 3.9 per cent; Australian - 18.6 per cent; British - 2.1 per cent; English - 36.8 per cent; Greek - 1.9 per cent; and Italian - 3.7 per cent. The figures on immigrants revealed a different pattern: 19.75 per cent came from the United Kingdom and Ireland, 5.68 per cent from northern Europe, 5.3 per cent from southern Europe, 5.85 per cent from the Middle East, 2.28 per cent from the United States and Canada, 2.53 per cent from South and other America, 4.72 per cent from Africa, 36.75 per cent from Asia, 2.99 per cent from Oceania and 13.22 per cent from New Zealand. Those figures confirmed the statement in paragraph 16 of the eighth report (CERD/C/194/Add.2) that "the federal Government has emphasized that its multicultural policy is quite distinct from immigration policy. It plays no part in migrant selection".

46. The three reports of Australia underscored its commitment to a policy of multiculturalism, the objective of which was described in paragraph 16 of the eighth report. Paragraph 18 noted, however, that there were also limits to multiculturalism. The Office of Multicultural Affairs referred to in paragraph 24 had an advisory and monitoring role, and it was developing effective liaison and consultation mechanisms with the broad community, including the ethnic communities. But nothing was said about the composition of the Office or the extent to which immigrants and Aboriginal and Torres Strait Islander peoples were represented. Paragraphs 28, 29, 32 and 34 dealt with the various strategies adopted by the Australian Government to foster multiculturalism and prevent racial discrimination. The goal of the Access and Equity Strategy was to ensure that immigrants and their families had equitable access to Government programmes and services. The Social Justice Strategy was based on four principles: the fair distribution of economic resources; the enhancement of an individual's rights; opportunity for all to participate in the life of the community; and fair access to essential community services. The Community Relations Strategy focused on such areas as legislation, the police, the media, education and housing, which were crucial to the promotion of harmonious community relations.

47. The aim of the law reform policy was to determine whether legislation in certain areas of federal constitutional power was appropriate to a multicultural society.

48. Those policies and strategies were of great importance for the implementation of the provisions of the Convention; that was the reason why

the Committee should be informed not only about their existence, but also about the results achieved. In that connection, he would like to know exactly which provisions of the Australian Citizenship Act were to be repealed.

49. The basis for the implementation of the Convention in Australia was the 1975 Racial Discrimination Act, whose objective was to prohibit, in Australia and in Australian territories, all forms of racial discrimination, including those enumerated in article 5 of the Convention. That law, which prohibited any act involving a distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin, reflected the definition of racial discrimination in article 1 of the Convention. It should be noted that, by virtue of the amendments to the Act, the racial discrimination which it prohibited included indirect discrimination; the protection provided by the Act had been strengthened, and it was no longer necessary to prove that racial discrimination was the dominant reason for an action for that action to be considered unlawful. It should also be noted that employers were vicariously liable for acts of racial discrimination committed by their employees in connection with their duties. The legal provision guaranteeing equality before the law in the enjoyment of rights took precedence over all federal, State and territory laws. He would like to know, however, whether that meant that the other provisions of the Act did not take precedence.

50. At the end of 1986 the Australian Government had established the Human Rights and Equal Opportunity Commission, which was responsible for administering legislation relevant to Australia's obligations under international human rights instruments. A permanent body, it consisted of a part-time President and four full-time Commissioners: the Human Rights Commissioner, the Race Discrimination Commissioner, the Sex Discrimination Commissioner and the Privacy Commissioner, each of whom was responsible for handling complaints on behalf of the Commission within his or her respective sphere. At the same time, he had the impression that the Race Discrimination Commissioner enjoyed greater authority than the others, and he would welcome further information on that matter. He stressed that, under the Racial Discrimination Act, the Commission had the authority, inter alia, to inquire into any act which might constitute an unlawful act of racial discrimination following the receipt of a complaint in writing. While welcoming the establishment of the Commission, which could serve as an example to other countries, he wished to know how it was regarded by the Aboriginal and Torres Strait Islander people. He considered the information submitted on the activities of the Commission insufficient, and wondered whether it might not be possible to have the reports which the Commission was no doubt expected to furnish annually on its work. He was surprised that the eighth report did not mention the Aboriginal and Torres Strait Islander Commission, to which the representative of Australia had referred in his statement, and asked whether the Aboriginal and the Torres Strait Islanders were satisfied with it and what relations it maintained with the two other Commissions mentioned.

51. Turning to the measures adopted by the States, he noted that New South Wales had an Anti-Discrimination Act dating from 1977, which prohibited racial discrimination in major areas of public life and provided for remedies in cases of discrimination based on colour, nationality and ethnic or national origin. With regard to the State of Victoria, he wondered why the 1977 Equal Opportunity Act had been re-enacted in 1984. It appeared

that complaints could be addressed to the Equal Opportunity Board, which could even impose criminal penalties. He was surprised that the Government of the State of Queensland had waited so long before considering the implementation of legislation against discrimination. Did the federal Government not have any means of implementing the Convention in Queensland? In South Australia, the 1986 Equal Opportunity Act prohibited discrimination on the ground of race in the areas of employment, education, property law, housing and the provision of goods and services. A Commissioner for Equal Opportunity was responsible for its implementation. In Western Australia, the 1984 Equal Opportunity Act prohibited discrimination on the grounds of sex, marital status, pregnancy, race and religious or political conviction in employment, education or daily life. At the same time, however, there were exceptions, for example, where a person's race was a genuine occupational qualification or where an act was done in order to meet the special needs of a racial group or pursuant to a law establishing discrimination based on citizenship. He noted that part III of the Act defined race in the terms of article 1 of the Convention. The Act established the post of Commissioner for Equal Opportunity, who was invested with various functions. In February 1983, the Government of Western Australia had appointed a Minister for Multicultural and Ethnic Affairs. He wondered why there was no comparable Act in the Australian Capital Territory, the Northern Territory or Tasmania.

52. The various regulations at the federal and State level met the requirements of articles 2 and 5 of the Convention, but he considered that the relationship between federal and State law was not clearly defined. He would like to know which law would apply in a given case, which Commission or Commissioner would take action, and if a case could be brought before a State Commission and subsequently before the federal Commission. He also wished to know why the federal authorities had never tried to enforce implementation of the Convention in the Australian Capital Territory, Tasmania or the Northern Territory. He asked the representative of Australia to explain the exceptions to the Equal Opportunity Act in Western Australia, to indicate why the Act did not cover charitable bequests, membership of voluntary bodies, religious bodies or establishments providing facilities for the aged, and asked what was meant by the expression "short-term exceptions" and whether other Acts were also subject to exceptions.

53. Referring to the implementation of article 3 of the Convention, he noted that the Australian Government had adopted a whole series of political, social and economic measures against South Africa in conformity with the objective and spirit of that article, but wondered whether there continued to be economic links between the two countries.

54. Where article 4 was concerned, when the Convention had been ratified, the Australian Government had stated that it intended, at the earliest opportunity, to request Parliament to adopt legislation to implement the provisions of article 4 (a). Australian legislation did not currently comply with those provisions. Since the Equal Opportunity Commission was in favour of legislation against incitement to discrimination, he would like to know whether such legislation was in preparation. Neither the report nor the oral presentation gave any information on paragraph (b) of that article.

55. In its reports, the Australian Government had provided useful information regarding the status of the Australian Aboriginal and Torres Strait Islanders,

acknowledging that it should be improved. It had, however, emphasized that the problems confronting the Aboriginal and Torres Strait Islanders, and also immigrants, should not be seen exclusively in terms of racial discrimination, since clashes of value systems and cultures were frequently at issue, and it had added that the attempt to remedy them within the context of the Convention would neither be easy nor, perhaps, desirable. He would like to have information on that issue, particularly in the light of the provisions of article 2 of the Convention, which affirmed that States should take effective measures to enhance the status of disadvantaged ethnic groups. No information had been given on the reason for such clashes of value systems and cultures in Australian society, and he wondered whether it would not be more correct to say that the ruling group was trying to impose its values upon the minorities. The problems to be addressed would not be solely of a cultural character, but would also concern the provision of the necessary infrastructures. There, too, might it not be better to say that the Aboriginals did not always accept the services offered to them?

56. Information could be found in the two latest reports on the special and concrete measures taken in the social, economic, cultural and other fields to ensure adequate development and protection of certain racial groups for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. With regard to land rights, it should be emphasized that the federal and State authorities had taken steps to restore the rights of the Aboriginals to their land. However, what was involved was more a social policy than recognition of a right which had been violated. The Government had abandoned the idea of enacting national legislation on the land rights of the Aboriginal peoples in favour of a State-by-State approach. He wished to know what difference there was between the preferred model mentioned in the reports and the model currently being followed by the States. He also wondered why the Aboriginal communities had been opposed to the draft federal legislation and to what extent the federal plan on land rights differed from the Barunga statement, in which the Prime Minister had promised that negotiations for a treaty would be initiated by the end of 1988.

57. He noted, on the basis of the information contained in the eighth report, that the land rights situation of the Aboriginals was deplorable. Except in South Australia and the Northern Territory, the percentage of land held by the Aboriginals and Torres Strait Islanders was negligible. In Queensland, for example, where they represented 2.37 per cent of the population, Aboriginals owned no more than 0.01 per cent of the land. It was only recently that the States had granted the Aboriginal communities title to the lands of their ancestors. He would like to know what conditions had to be fulfilled for entitlement to leasehold, whether it could be revoked, and what restrictions applied with regard to the economic use of the land. He would also like to know whether only Crown land could be made over or whether landowners could be expropriated, how the Aboriginal lands were administered, and whether a lease could be revoked for economic reasons. Finally, he would like information on the content of the Agreement concluded between the Prime Minister of the federal Government and the Prime Minister of the Northern Territory on 10 September 1989 on the land rights of the Aboriginals and whether it was true to say that the Agreement was based on the current needs of the Aboriginals.

58. As far as the judicial system was concerned, the Aboriginals and Torres Strait Islanders were particularly disadvantaged with regard to access to legal support and advice. Statistics showed that the Aboriginals and Islanders were disproportionately liable to criminal proceedings. According to the official figures, Aboriginals represented more than 10 per cent of the prison population, although they accounted for only 1.5 per cent of the Australian population. He would like to know whether it was true that those committing minor offences were treated differently according to their ethnic origins. The high percentage of Aboriginals and Islanders in custody indicated that they were sometimes judged by non-indigenous standards, while their own system of administering justice was neither accepted nor acknowledged. Similarly, the exceedingly high number of deaths among Aboriginals and Islanders in custody showed that they were being held in conditions which did not correspond to their needs. The Royal Commission into Aboriginal Deaths in Custody had stated that the deaths had not been due to acts of violence committed by police officers, but that their number was to be explained by the high proportion of Aboriginals in custody. He wondered whether the Aboriginals were not in fact suffering more than whites when they were imprisoned. The problem was one which should remain under consideration. He would welcome details regarding the incidents which had occurred in the Redfern community in Sydney in 1988, 1989 and 1990. Had the police been obliged to use force in order to execute search warrants? Were the May 1990 findings of the Human Rights and Equal Opportunity Commission concerning police activities in Redfern correct? Was it true that, in August 1989, a justice of the Supreme Court of New South Wales had found that it would be preferable not to extradite 16 Aboriginal plaintiffs to Queensland to face riot charges? What were the grounds for such a decision?

59. In their fifth, sixth and eighth reports the Australian authorities had acknowledged that, because of the discrimination, dispossession and dispersal to which the Aboriginal and Torres Strait Islander Australians had been and were subjected, it had been necessary to set up special programmes of assistance to enable them to have full access to their economic, social and cultural rights. To that end, the federal and State Governments initiated and financed a multitude of programmes every year. Even so, unemployment was much higher among the Aboriginals, and especially Aboriginal women. In that connection, attention should be drawn to the policy of developing employment for the Aboriginals and the negotiation and implementation of employment and career-development strategies in the public and private sectors. He wondered, however, why that policy had not been adopted until 1987, and he would like to be informed of its results. He also wished to know the unemployment rate among Aboriginals as compared to the average, the percentage of skilled workers, academics and self-employed persons, and the number of those employed in the public service.

60. The Australian Government acknowledged that the housing situation of Aboriginals and Torres Strait Islanders should be improved, but the information provided on that question was inadequate.

61. According to the sixth and eighth periodic reports, the health status of the Aboriginal and Torres Strait Islander peoples was worse than that of any other group in Australia: life expectancy was some 20 years lower than the national average, and the rate of infant mortality was at least three times higher than that of the rest of the population. In that regard, a national

strategy for promoting health had been adopted. The Government at all levels and the Aboriginal and Islander communities had undertaken to cooperate in order to improve the situation. At the same time, he noted that the strategy dated back only to 1989, and he wondered why the authorities had not acted earlier. In addition, he noted that the information regarding the strategy was extremely vague, and he would like to know what specific measures had been taken, particularly in respect of the campaign against alcoholism. He also wondered whether the Aboriginal communities were provided with hospitals and with doctors and nurses who spoke their language and were familiar with their traditions; whether the health policy took into account the fact that Aboriginal cultures and traditions might conflict with the health services offered, and he would like to know what had been the outcome of the proceedings brought by a group of Aboriginals against the Government in connection with the harm caused by alcoholism.

62. In connection with the right to education, he pointed out that very few Aboriginals and Torres Strait Islanders continued their studies beyond the compulsory period of schooling and that the proportion of those who had never attended school was much higher among the Aboriginals and Torres Strait Islanders than in the rest of the population. Furthermore, most schools did not provide instruction in Aboriginal culture, traditions and languages. In order to remedy that situation, provision must be made both for instruction to enable the Aboriginals and Islanders to adapt to society and also for informing the non-Aboriginal population about their culture and way of life. In that connection, he wondered what the Australian Government had done to preserve the cultural heritage of Aboriginal and Torres Strait Islander Australians. In the case of the latter, rumours were circulating to the effect that the federal Government was in the process of negotiating a treaty with Papua New Guinea. What was the content of that treaty and would it have repercussions on the lives of the people living in the region?

63. As far as immigrants were concerned, he considered that the treatment of both immigrants and refugees fully met the objectives and spirit of the Convention. He would, however, like to know how many refugees had succeeded in settling in Australia in recent years, what were their countries of origin, and whether an AIDS test was compulsory for immigrants. The Australian Government had amended the regulations regarding immigration, allowing illegal residents more time to apply for permission to remain in the country. He would be grateful for further information on that question.

64. In his statement, the representative of Australia had indicated that his country had decided to ratify the Optional Protocol to the International Covenant on Civil and Political Rights. He would like to know whether the Australian Government also intended to make a declaration under article 14 of the Convention.

65. In conclusion, the reports submitted by Australia were very detailed and extremely constructive, and he congratulated the Australian representative on all the information he had provided.

Mr. Lamptey took the Chair.

66. Mr. BANTON said that, as a State party to the Convention, Australia was required to ensure that its component States were applying the provisions of

that instrument. In that connection, he regretted that the federal Government had not, in its two most recent reports, been as frank as it might have been in describing the problems it was encountering in that respect. He had in mind in that connection the attempts made by Queensland to circumvent the provisions of the 1975 Racial Discrimination Act.

67. He would like to have details of the land legislation which the Hawke Government had promised to introduce and which was to be based on a package of principles, one of which was the granting to the Aboriginals of control of mining operations on their land. He also considered that the failure to pass any land rights legislation in Western Australia represented a serious setback (see document CERD/C/SR.817, para. 10).

68. Was it true that the States of Western Australia and Queensland had stated that the Royal Commission into Aboriginal Deaths in Custody had not been authorized to examine certain issues which none the less fell within the scope of its mandate?

69. In short, the Committee would like to have a straight answer from the Australian delegation to the following question: was the federal Government satisfied by the measures so far taken by the State of Queensland to implement the provisions of the Convention?

70. He expressed indignation at the culpable negligence of the authorities in towns situated on the New South Wales-Queensland border (the Toomelah region). As was indicated in paragraph 252 (c) of the eighth report, the Aboriginals in those towns "were living in appalling conditions". He would like to have a copy of the second report, referred to in the paragraph, of the Commission which had brought those facts to light. He also hoped that in the next report of Australia, more comprehensive information would be given on the way in which "the Commission continues to monitor the situation".

71. In that connection, he would like to know whether, in compliance with article 6 of the Convention, Australia was assuring to the Aboriginals of Toomelah effective protection and remedies. It was surprising to see from Australia's fifth report that the Aboriginals in that region had never lodged a complaint of racial discrimination when the law entitled them to do so.

72. Had the recommendations made by the Royal Commission into Aboriginal Deaths in Custody in its interim report been followed up (eighth periodic report, para. 254)? Had they been issued after consultation with the Aboriginals?

73. Had the police received orders to grant conditional release on bail more frequently to Aboriginals in detention, in order to limit the numbers in custody?

74. What were the Australian delegation's views on the allegation by the Fingal community in New South Wales that the State Government would contrive to circumvent the law on the land rights of the Aboriginals and on the fact that the Aboriginals of the Torres Strait had approached the Working Group on Indigenous Peoples of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities?

75. He regretted that, in its report on racist violence in Australia, the Human Rights and Equal Opportunity Commission had not dealt in greater depth with the causes of racist behaviour among large numbers of white Australians. Effective remedies could only be found if the causes were known.

76. Since the main argument used by people whose behaviour was racist was that non-white immigrants were taking their jobs, there must be a determined campaign against racial discrimination in the employment market, in particular by introducing legislation as effective as that, for example, aimed at deterring Australian motorists from drinking and driving.

77. The police was called upon to play a key role in the campaign against discrimination. Police officers must be made aware that they had to set an example in regard to the application of new rules. If they were entrusted with that task, they might find it easier to accept a change of attitude.

78. With regard to detention, the name of a police officer who had made an arrest and would be responsible for the detained person while in custody should be entered in a register (page 319 of the Commission's report).

79. Among the recommendations which appeared on pages 331 to 333 of the Commission's report, one seemed to him to be particularly important, namely the recommendation that the ability to work effectively with non-English-speaking persons should be taken into account in the promotion of police officers.

80. In conclusion, he said that he fully agreed with what Mr. Wolfrum had said, and thanked Mr. Tickner for his oral presentation.

81. Mr. de GOUTTES paid a tribute to the Australian Government for the substantive nature of its report and the copious information provided, but regretted the absence of any statistics on sentences imposed on persons guilty of racist acts.

82. He was surprised that, under the pretext of avoiding a restriction on freedom of speech, incitement to racial hatred was not repressed by federal legislation. He wondered whether that situation would be maintained, particularly in view of the recommendations made by the authors of the report on racist violence in Australia. He also wished to know whether acts such as racial defamation, insults of a racial nature, advocacy of racism, and racist propaganda were covered by federal legislation.

83. He would like to know the specific reasons for the relatively high number of Aboriginal deaths in custody. Were they due to the poor health of the Aboriginals? Were there suicides, and did alcoholism play a part?

84. What was the exact percentage of Aboriginals in custody in relation to the total population? For what offences had they been imprisoned, and what penalties had been imposed?

85. In view of the close links between federal and State bodies responsible for combating racial discrimination, was there not a risk of overlapping? For example, how were the functions of the federal Human Rights Commissioner to be

distinguished from those of the Equal Opportunity Commissioner in Western Australia, for example? How did victims of racial discrimination decide to apply to one body rather than another?

86. Mr. LECHUGA HEVIA said he would like to know why the Australian authorities had been so tardy in opening an inquiry into Aboriginal deaths in custody.

87. He would also like to know the number of jurisdictions which had not accepted the recommendations made by the Royal Commission into Aboriginal Deaths in Custody. Paragraph 254 (c) of the eighth report stated that the recommendations had been accepted by most jurisdictions. Did that mean that some jurisdictions did not wish to put an end to a climate which engendered racial discrimination?

88. Mr. VIDAS joined Mr. Banton and Mr. Wolfrum in asking the Australian delegation for explanations regarding relations between the federal Government and the States Governments regarding implementation of the Convention.

89. Referring to paragraph 15 of the sixth report (CERD/C/146/Add.3), he as asked why the members of the Human Rights and Equal Opportunity Commission did not include, in addition to the Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner, a fourth commissioner responsible for handling discrimination against the Aboriginals.

90. How did it come about that the Aboriginals, who represented only 1.5 per cent of the Australian population, owned 12 per cent of Australian land?

91. What had been the results of the negotiations between the federal Government and the Government of Tasmania, which were referred to in paragraph 33 of the sixth report?

92. Had the amendment aimed at extending the law on racial discrimination to cover incitement to hatred and racial defamation, to which reference was made in paragraph 69, been adopted?

93. He welcomed the measures taken by the Australian Government, which were set out in paragraphs 77 and 86 of the report.

94. He would like to know why the number of complaints under the 1975 Racial Discrimination Act had sharply declined between 1985 and 1990.

95. In conclusion, he suggested that the Committee should congratulate Australia on the progress it had achieved since ratifying the Convention.

The meeting rose at 1.15 p.m.

CERD/C/SR.916
12 August 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 916th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 3.00 p.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Sixth, seventh and eighth periodic reports of Australia (*continued*)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Sixth, seventh and eighth periodic reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2) (continued)

1. The CHAIRMAN drew attention to the fact that the seventh and eighth reports were submitted together in document CERD/C/194/Add.2.

At the invitation of the Chairman, Mr. Tickner (Australia) took a place at the Committee table.

2. Mrs. SADIQ ALI said the reports submitted by the Government of Australia showed that the country had made impressive strides in its efforts to eradicate racism and racial discrimination. But much still remained to be done to prevent mistreatment of the Aboriginal population.

3. Concerning Aboriginal deaths in custody, a final report on the inquiry conducted by five regional commissioners had been expected in 1990, and it was therefore to be hoped that information on the subject would appear in Australia's next report. She would like to know whether any Aboriginal organizations, such as the Committee to Defend Black Rights or the Aboriginal Islander Legal Services Secretariat, had been allowed to participate in those inquiries. With regard to the Royal Commission, it seemed that action on the interim report was being left in the main to either corrective services ministers or individual police stations, the very people whose behaviour had given rise to the demand for the Commission. The Federal Government, although it had established the Commission in cooperation with the States, had again handed its responsibility back to the States. The Committee should be provided with more information on that point.

4. Drunkenness and disorderly conduct made up 63.8 per cent of the offences with which Aboriginal people had been charged, despite the Royal Commission's interim report recommendation that in jurisdictions where it had not been decriminalized, Governments should legislate to abolish the offence of public drunkenness. The police authorities in every State of Australia were still apparently arresting and holding Aboriginal people in custody on such minor charges as intoxication and the use of "offensive" language.

5. As the majority of Aboriginal people who had been found dead in custody since the announcement of the Royal Commission's establishment had died within two hours of their arrest on minor charges, the failure of the Federal and State Governments to act on that and other related recommendations was tantamount to genocide.

6. The reintroduction in 1988 in New South Wales of the Summary Offences Act authorizing the police to make arrests on the basis of "behavioural deviations" rather than criminal offences, ran counter to the spirit of the Royal Commission's interim recommendations. She would like to know whether any police officer had been charged in connection with any of the Aboriginal

deaths in custody examined by the Royal Commission. The Australian Government must deal with police brutality severely, and it was also to be hoped that it would take steps to implement article 4 of the Convention.

7. In New South Wales, Aboriginal children, who made up only 1.8 per cent of the State's total juvenile population, accounted for at least 25 per cent of the institutionalized juvenile population. The Royal Commission had found that Aboriginal children were routinely abducted from their families, which were considered unable to care for them adequately, and were institutionalized in juvenile homes, and it had concluded that it was essential to stop treating Aboriginal people as dependents whose welfare must be looked after by others and to give them back opportunities for self-reliance, independence and self-respect. In that connection, she asked whether Australia had ratified the Convention on the Rights of the Child. The Federal Government must assert itself when it found that States had not fulfilled their obligations and responsibilities in the area of human rights.

8. She welcomed the establishment in 1990 of the Aboriginal and Torres Strait Islander Commission (ATSIC), a first step on the road to an Aboriginal structure of local and regional government within the Commonwealth. But ATSIC had no resources of its own, and its activities on behalf of the Aboriginal population were apparently being curtailed. She would like further information on that point.

9. The Aboriginal population had proposed a five-year moratorium on the proposed Queensland space port on Cape York peninsula, a project that would have a serious impact on the environment and on the lives of the 8,000 to 10,000 Aboriginal people living there. Although they made up the majority of the Cape York population, the Aboriginal people had almost no control over land-use decisions. In that context, she asked for more information on the role of the Cape York Aboriginal Land Council.

10. The protection of sacred sites was an important issue for the Aboriginal population, and she requested further details on the situation in Western Australia, where the fringe dwellers of the Swan Valley had been trying to stop the State Government's plan to restore the old Swan Brewery in Perth because of the site's special significance to them.

11. Mr. YUTZIS commended the Australian delegation on its detailed and comprehensive eighth report, which would, however, have been clearer if the articles of the Convention had been dealt with in their proper order. He also regretted that he had not received the document in time to study it thoroughly.

12. With regard to the substance of the document, the scope and the limits of freedom constituted a matter of overriding importance for the Committee. It was dealt with in paragraph 179 of the eighth report, which set out the view of the Australian Human Rights and Equal Opportunity Commission that the right to free speech was undeniably an important human right but, as human rights did not exist independently of each other, that right needed to be considered and balanced with other competing rights. Inasmuch as certain regions in Australia enjoyed special rights, the central Government must take a closer look at the criteria it used for ensuring that the Convention was implemented equally throughout Australian territory. While he conceded the possibility of

different laws existing in different regions, he thought there must be a unified method of combating the problems that were at the heart of the Convention.

13. Concerning paragraph 17 (a) of the report, he drew attention to the phrase "within carefully defined limits" and asked who defined such limits.

14. Paragraph 21 stated that the problems confronting Aboriginal and Torres Strait Islander peoples should not be seen exclusively in terms of racial discrimination. He would like to know what other factors were involved and what problems confronting those peoples should not be viewed in the context of the Convention. It was to be hoped that the Government of Australia could provide further information on that subject so that it could be discussed more fully at a later date.

15. It was stated in paragraph 111, that the impact of mining in certain areas had raised concern in Aboriginal communities and that a study group had presented a report on the subject to the State Government in July 1989. He asked when the State Government would respond to that report. He agreed with other speakers that there was a close relationship between racism and ecology.

16. A subject that had been highlighted in the report was the death in custody of a number of Aboriginals. The Government of Australia had stated that it was unable to detect any objective reason, such as violence against Aboriginal persons, for those deaths, but the deaths had nevertheless occurred, and a precise analysis of the causes was needed.

17. He appreciated the detailed statistics provided in table 2 in paragraph 239, on complaints lodged under the Racial Discrimination Act of 1975. In that connection, he asked whether the sharp increase in the number of complaints in the area of employment between the periods 1 July 1988-30 June 1989 and 1 July 1989-30 June 1990 had been due to a worsening in the employment situation or to the fact that more people were lodging complaints.

18. The CHAIRMAN, speaking in his personal capacity, said Australia was to be commended on its devotion to multiculturalism, which was particularly welcome in a period of rising xenophobia and intolerance toward minority cultures. He also welcomed Australia's willingness to allow the performance of its obligations under the Convention to be scrutinized. The Australian delegation had reported on the results of the investigation by the Royal Commission into Aboriginal Deaths in Custody and had spoken of the suffering experienced by many Aboriginal persons because of their separation from their natural families. Unemployment, alcoholism and other problems had also been mentioned. All those issues must be tackled, especially within the context of the proposed council for reconciliation to be set up under Australian legislation. Aboriginal persons were the victims of violence, and the point raised by Mrs. Sadiq Ali in that connection was highly pertinent.

19. With regard to the implementation of the provisions of the Convention the Australian representative had stated that legislation was contemplated instituting specific criminal offences at federal level to curb racist violence and intimidation, and he suggested that, in enacting that legislation, Australia might give special consideration to reflecting the

provisions of article 4 of the Convention. When the model legislation was approved by the General Assembly, it was to be hoped that Australia would make it the basis of its legislation to combat racial discrimination. Inasmuch as Australia had decided to accede to the Optional Protocol to the International Covenant on Civil and Political Rights, it should also consider acceding to article 14 of the Convention.

20. He asked for some elucidation of the reference made in paragraph 10 of the sixth report (CERD/C/146/Add.3) to clashes of value systems, and also inquired, with regard to paragraph 73 of the same report, how far work had progressed on formulating and implementing legislation to accord partial recognition to Aboriginal customary laws.

21. Mr. TICKNER (Australia) drew attention to two technical errors in document CERD/C/194/Add.2. Paragraph 66 should be deleted, and in paragraph 96, the word "repealed" should be replaced by "amended".

22. The Special Rapporteur had asked to what extent Aboriginal and Torres Strait Islander Peoples Australians were represented in the Office of Multicultural Affairs. The Australian Government had given priority to ensuring their representation in commissions of direct relevance to Aboriginal communities. The proportion of Aboriginal persons working in the Aboriginal and Torres Strait Islander Commission, an important Government body, was 40 per cent or more. In the Department of Employment, Education and Training, the proportion of Aboriginal employees was significantly higher than the proportion of Aboriginal persons in the overall population. He did not know what the situation was in the Office of Multicultural Affairs, but that was a small body, and the ratio of Aboriginal to non-Aboriginal employees was therefore relatively unimportant. The head of the secretariat established within the Prime Minister's own department to facilitate the process of reconciliation was an Aboriginal person, as was the acting deputy head of the Prime Minister's own department.

23. The Special Rapporteur had asked for information on the results of the strategies adopted by the Government to promote multiculturalism and to bar discrimination. The law reform policy he had mentioned was not, however, a separate strategy; the reference in paragraph 34 of the eighth report was to an inquiry undertaken by the Law Reform Commission, which had not yet presented its final report. He had unfortunately been unable to obtain the information requested by the Special Rapporteur in the time available, but it would be included in Australia's next report.

24. In response to the request for an explanation of the removal of discriminatory provisions in the Australian Citizenship Act, he referred the Committee to paragraph 40 of document CERD/C/194/Add.2 for the main objectives of the amendments made by Parliament.

25. Questions had been asked by several members about the overriding of State laws by the federal Racial Discrimination Act and the latter's relationship with State and Territory anti-discrimination legislation. He referred the Committee to section 6A of the Racial Discrimination Act of 1975, which preserved the operation of State and Territory laws that furthered the objectives of the Convention and were capable of operating concurrently with the Racial Discrimination Act. The section had been inserted after the High

Court had held that the Act evinced an intention to cover the field of racial discrimination legislation, with the result that inconsistent State and Territory legislation on the subject would be invalidated by the operation of the Australian Constitution, which provided, in section 109, that where the law of a State was inconsistent with national law, Commonwealth law prevailed to the extent of the inconsistency and the State law became invalid. Had that situation been allowed to prevail, State and Territory legislation that went even further than federal legislation, such as the racial vilification provisions of the New South Wales Anti-Discrimination Act, would be overridden by federal law.

26. A person alleging racial discrimination was entitled to lodge a complaint with either the federal Human Rights and Equal Opportunity Commission or, where applicable, with a commission or board established under State anti-discrimination legislation. If a complainant chose to lodge a complaint with a State body, section 6A operated to remove the possibility of federal action before the federal Commission. There would be cases where a complainant did not have that choice, because only federal or only State legislation covered the subject of the complaint. The Racial Discrimination Act, for instance, bound both the federal and State authorities, whereas State legislation could not bind the federal authorities. The provision, therefore, guaranteed maximum choice by the complainant, ensured the highest achievable standard, and sought to bring about a workable relationship between the components of the federal system.

27. He could assure the Committee that the federal Government was fully committed to meeting its international obligations, including those under the Convention. He was not aware of any gap in the legal protection provided against racial discrimination. The Racial Discrimination Act, which was the relevant federal legislation, applied throughout Australia, and no separate legislation by States was required to ensure Australia's compliance with the provisions of the Convention. Section 6A of the Racial Discrimination Act was designed to prevent any problems arising from conflicting or overlapping jurisdiction.

28. The powers of the Race Discrimination Commissioner were comparable with, and at least as broad as, those of the other Commissioners of the Human Rights and Equal Opportunity Commission. In some instances, her powers are much greater as they all extend to State government whereas those of other commissioners do not.

29. With regard to the attitude of Aboriginal and Torres Strait Islander people to the Human Rights and Equal Opportunity Commission, it should frankly be conceded that there were differences of opinion, but there was also evidence of some regard for the Commission's work. For instance, the Aboriginal and Torres Strait Islander people were among the most numerous users of the Commission, indeed in a proportion (25 per cent) very much higher than their representation in the total population (1.5 per cent) according to the 1986 population census. They had been instrumental in prompting many of the inquiries conducted by the Commission, including the Toomelah and Cooktown inquiries. The Commission, for its part, was aware of its responsibilities in informing them about their rights and about its own role and functions, and was continually taking action to ensure the exercise of those rights.

30. He would certainly comply with the request for copies of that Commission's reports by providing the Committee with two recent annual reports and requesting that it should receive past and future reports. Regarding Australia's periodic reports, he would address the matters of improved presentation, prompt submission and documentary backup raised by Committee members.

31. Although there was no formal legal mechanism connecting the Human Rights and Equal Opportunity Commission, the Aboriginal and Torres Strait Islander Commission and the former Royal Commission into Aboriginal Deaths in Custody, they had had, and continued to have, a very close working relationship; the two current Commissions were deeply committed to the same cause.

32. He was unable to say why the Equal Opportunity Act of Victoria had been re-enacted, but would ensure that a reply was given in the near future. In answer to the question about why it had taken so long for anti-discrimination legislation to be enacted in Queensland, he said that there had been a recent change of government in the State after 30 years. He understood that the new Government was in favour of enacting such legislation; developments would be reported in the next periodic report. That being said, federal legislation required all States to protect their citizens. In a famous action brought by an Aboriginal Australian, John Koowarta, against the former Queensland Government, the validity of the Racial Discrimination Act had been upheld, and the former Queensland Government's practice of refusing to transfer leaseholds of pastoral properties to Aboriginal interests had been abolished.

33. As to the absence of anti-discrimination legislation in Tasmania, the Northern Territory and the Australian Capital Territory, he was able to inform the Committee that legislation against racial discrimination was being prepared in all three areas. He hoped that he would be able to report the enactment of such legislation by the time of the next periodic report. In the meantime, the federal Racial Discrimination Act of 1975 would continue to have full force throughout Australia.

34. Details had been requested about the exceptions to the Western Australian Equal Opportunity Act. Under the exception concerning general occupational qualification, the Act exempted participation in, for example, a dramatic performance or other entertainment, or as an artist's model, where authenticity required a person of a particular race. A second exception concerned the provision of services for the welfare of persons of a particular race where those services could most effectively be provided by a person of the same race, such as in Aboriginal medical centres. Under the "special needs" exception, the Act permitted special measures in the provision of services or access to facilities needed by persons of a particular race; that exception was consistent with article 1, paragraph 4, of the Convention. Regarding citizenship, the Act permitted public sector authorities to discriminate in employment between Australian citizens and non-citizens; the Government believed that to be a reasonable provision, consistent with article 1, paragraph 3, of the Convention. General exceptions also applied to charities, enabling them to confer benefits on persons of a particular race, including ethnic minorities or disadvantaged groups, such as Aboriginal and Torres Strait Islander people; and to voluntary bodies, enabling special interest groups to exist for the purpose of promoting and providing benefits to persons of a particular race or ethnic minority, religious bodies and

religious educational institutions. Discrimination was permitted where it was necessary to avoid injury to religious susceptibilities, and in the training and ordination of priests, ministers, etc., in order to preserve the rights of religious bodies to follow their beliefs and practices. Another exception concerned housing for aged persons, in order to enable such persons to be accommodated, if they so wished, in institutions providing for a special group, such as one sex only, or a religious or ethnic group. Short-term exceptions could be granted by the Equal Opportunities Tribunal for a period not exceeding five years, the purpose being to enable affirmative action to be taken in circumstances where there were long-standing inequities. Only one such exception had been granted and it had related to sex discrimination.

35. On the subject of economic ties with South Africa, Australia permitted private economic links with South Africa, although it was among the least important of that country's commercial partners. The value of exports to South Africa had fallen in the period since the imposition of sanctions, amounting to $A 140 million in 1989, while the value of imports from South Africa was only $A 110 million. Australian companies were authorized to invest in South Africa but there was no official encouragement of such investment, and total direct investment represented a tiny proportion of Australia's total overseas investment. All new investment in South Africa by the Australian Government had been suspended. All Australian banks and other financial institutions had been asked to suspend making new loans, directly or indirectly, to borrowers in South Africa. Direct investment in Australia by the South African Government or its agencies was prohibited.

36. He would convey the very important question about Australia's implementation of article 4 (a) of the Convention to his Government. By way of a preliminary reply, he said that, for a number of years the Government had been considering the question of withdrawing its reservation under article 4. While fully committed to the spirit of the article, the Government was also mindful of its obligations to guarantee to all Australians the right to freedom of expression, assembly and association. Those rights were guaranteed by the International Covenant on Civil and Political Rights and by article 5 (d) of the International Convention on the Elimination of all Forms of Racial Discrimination. Australia also believed that there was already a degree of protection against the forms of racial discrimination dealt with in article 4 of that Convention. Incitement to, assisting in and promoting racial discrimination were offences under section 17 of the Racial Discrimination Act of 1975. Under the general criminal law, acts of violence, including racist violence, and incitement to such acts, were offences. In various jurisdictions, there were also offences relating to the use of threatening, abusive or insulting words in a public place. Significant criminal prosecutions of perpetrators of racist violence had taken place in Australia recently. In Western Australia, in September 1990, the leader of the Australian Nationalist Movement, a racist organization, had been tried and found guilty of 53 offences under the criminal law. He and a number of other members of the Movement had received substantial prison sentences. The Government was also conscious that the reports, completed in 1991, of the Human Rights and Equal Opportunity Commission's National Enquiry into Racial Violence, and of the Royal Commission into Aboriginal Deaths in Custody had both recommended the enactment of Commonwealth legislation against racial vilification and harassment. There had, therefore, been significant developments in regard to the issues raised by article 4 of the Convention

since the Committee's consideration of Australia's previous report. One of the issues which the Government would bear in mind in considering the reports of the two Commissions was that any action to suppress racist groups by law could give them and their views a degree of publicity which they did not currently receive in Australia. The Government would be considering in the near future various options, including possible legislation on racist violence and intimidation, incitement to racist violence and hostility and racial hatred, harassment and vilification. He assured the Committee that a very clear response would be provided in Australia's next periodic report.

37. The Committee's persistent questions about article 4 (a) of the Convention, and the suggestion that Australia did not fully meet the requirements of the Convention in that regard, would be conveyed to his Government. Although there was no specific offence relating to the existence and activities of racist organizations, the Australian Security Intelligence Organization had functions which included the protection of the Commonwealth of Australia and its people from politically motivated violence and the promotion of communal violence, including violent acts or threats for the purpose of influencing Government policy or promoting violence between different groups. The provisions of the general criminal law would apply to acts of violence or threats by racist organizations, as evidenced by recent successful prosecutions of the Australian Nationalist Movement.

38. Questions had been asked about the reference to "clashes of value systems and cultures" in paragraph 21 of the seventh and eighth reports (CERD/C/194/Add.2). He was aware and concerned that the statement might lead to some misinterpretation. Although it was true to say that the disadvantages or hardships suffered by the Aboriginal people might in some cases be due more to their geographical location, it could not be denied that they were primarily caused by the discriminatory attitudes of the dominant group. The Australian Government had enacted legislation and was implementing programmes to combat racial discrimination. A recent example of government action to protect the interests of a minority group had been its decision to prohibit a proposed mining venture at Coronation Hill in the Northern Territory because of the traditional significance of the land to the local Aboriginal People. The decision had been taken in the face of substantial opposition, and demonstrated the Government's serious resolve to protect the Aboriginal people's traditional interests.

39. A question had been raised about Australia's international obligations concerning affirmative action for minority groups, with reference to a statement in a previous report quoting from a report by the Australian Law Reform Commission. He wished to point out that that Commission was an independent body established to streamline the law, and its views did not necessarily reflect those of the Government. He confirmed that the Government had initiated affirmative action for Aboriginal and Torres Strait Islander people.

40. With regard to the opposition of the Aboriginal and Torres Strait Islander Australians to the so-called preferred model for Aboriginal land rights, that model had allowed for the inalienable freehold title to land for Aboriginals, but the rights granted had been fewer than those provided for in Northern Territory legislation. Although the Commonwealth Government had a large responsibility, the State-by-State approach was, in his view, more

appropriate. As he had reported to the Working Group on Indigenous Populations, legislation was being drawn up in Queensland to ensure Aboriginal land rights, but the Aboriginal Peoples considered that it did not go far enough. Tasmania had introduced a land rights bill, which had been defeated in the Tasmanian Upper House, but he hoped that the decision would be reconsidered and that the law would be passed by the end of the year.

41. With respect to the administration of land rights in the States, particularly the Northern Territory, he would provide the Committee with documentation, including a summary of the enabling legislation setting up bodies to administer land. As far as the leasehold of land by Aboriginal Peoples was concerned, leases could be revoked for non-compliance with the lease conditions, a rule which applied to Aboriginal Peoples as well. However, only Crown land could be leased. It was open to Aboriginal Peoples and others to buy leases from private companies. The States had not as a rule adopted a policy of acquiring private land for occupation by Aboriginal Peoples.

42. Information had been requested on the nature of the agreement between the Prime Minister and the Chief Minister of the Northern Territory. That was a long overdue, cooperative agreement, intended to provide for the people whom the Land Rights Act had forgotten. They were mostly pastoral people and were the most disadvantaged group in Australian society. Their needs were at last starting to be addressed, and the Prime Minister, the Chief Minister and he himself attached a high priority to the improvement of their lot.

43. With regard to the question whether Aboriginal people formed a higher proportion of the prison population than of the population at large, the relevant information would be found in table 22 (a) of the National Prison Census, 1988, which classified prisoners by gravity of offence and status (Aboriginal or non-Aboriginal). The Commonwealth Government recognized the need to provide legal aid for Aboriginals and contributed $17.5 million a year for the 20 independent Aboriginal and Torres Strait Islander legal aid centres existing around the country, in addition to jointly funding other legal services with State governments.

44. With regard to the assertion that Aboriginal Peoples were too often arrested where a summons would have been more appropriate, the Royal Commission into Aboriginal Deaths in Custody had emphasized the need for a change of practice and was putting forward guidelines, which would be finalized by March 1992. The Commission's 339 recommendations did not cover police practice alone, but were an agenda for the reform of all aspects of the law relating to Aborigines, including housing, employment, health, resources for roads and other services, the Aboriginal historical and cultural heritage, and relations between Aboriginal and Torres Strait Islander Australians and the rest of the population. The Government's response had not yet been made public, but the interest of the international community would be a vital element in that response. He gave a commitment that the next report would contain details of proposed and enacted legislation.

45. With regard to the police raids which had been carried out in the Sydney suburb of Redfern, serious concern, which he himself shared, had been expressed, particularly by the Human Rights and Equal Opportunity Commission.

He trusted that police practice had improved, especially in the light of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

46. Turning to the case in which a court in New South Wales had refused to order the extradition of an Aboriginal to Queensland, he said that the decision had been taken on the ground that in Queensland Aboriginal Peoples tended to choose not to serve on juries, the state of prisons was inadequate and there was a risk of hostile media coverage. The accused might not have received a fair trial; the conditions in which he was kept might have been oppressive and decisions might have been biased. Following the establishment of a royal commission on the state of justice in Queensland, conditions had improved. He was confident that there would be no repetition of the incident, which nonetheless did credit to the openness of the courts and judges.

47. With regard to the question concerning Aboriginal unemployment and, more generally, the results of the Aboriginal Employment Development Policy adopted in 1987, he stated that according to the 1986 census, Aboriginal unemployment amounted to 35 per cent, compared with a 1991 average of 9 per cent for the whole country. On the wider issue, it had not been possible to obtain the information requested, but it would be provided in the next report. The Policy was in the process of being reviewed and a decision would be taken in 1992. Government action had not in fact begun in 1987, but that had been the year when an Aboriginal, Mr. Mick Miller, had reviewed the old policy and written a report on which the 1987 Policy was based.

48. On the question of the need for more Aboriginal housing, he was unable to supply statistics, but could confirm that the need was immense. The Minister responsible for Aboriginal housing policy was conducting a comprehensive review of the matter but the Royal Commission into Aboriginal Deaths in Custody had said that a survey of Aboriginal housing infrastructure also needed to be carried out. The Government was committed to meeting Aboriginal demands that they should have the key role in schemes to improve housing infrastructure. The Aboriginal and Torres Strait Islander Commission had already spent $53,888,000 and a further $91 million had been provided by the Ministry of Housing.

49. It had been asked why action had not been taken earlier to improve Aboriginal health services. The difference between the current Aboriginal Health Strategy and previous schemes was that it was run by Aboriginal and Torres Strait Islander Peoples themselves. The aim was to ensure that bureaucrats and health workers were answerable to Aboriginal and Torres Strait Islander Peoples. Generally, the Government's policy was that Aboriginal and Torres Strait Islander Peoples should be in charge of improvements in their conditions.

50. With regard to the need for alcohol rehabilitation programmes, given the terrible impact of alcohol on the Aboriginal community, he referred the Committee to the action brought by Christian, Ryan and Lucas against brewers and the Government, claiming that the rights of Aboriginal and Torres Strait Islander Peoples under international treaties had been abused and that the Government had been negligent in not providing alcohol rehabilitation programmes. The Court had ruled against the plaintiffs, on the ground that no legislation on the matter existed and that under the law no rights had therefore been abused. He considered that the judgement underlined the

importance of Australia's proposed accession to the First Optional Protocol to the International Covenant on Civil and Political Rights. He added that the Commonwealth Government did in fact run an alcohol rehabilitation programme.

51. In response to the question asked about the agreement between Australia and Papua New Guinea, any suggestion that it involved a change in Torres Strait Islander Peoples' citizenship was completely mistaken. The agreement was already in existence and concerned only the continuance of the current arrangements relating to traditional visiting rights. The Australian citizenship of Torres Strait Islanders was not affected.

52. As far as reconciliation was concerned, he fully shared the motives behind the question. He believed that what was required was a decade-long programme to increase public awareness of Aboriginal history, culture, dispossession and general disadvantages and of the need to improve the situation.

53. With regard to the safeguarding of the Aboriginal cultural heritage, it was essential that skeletal remains in museums around the world should be returned and he welcomed the recent promise by the University of Edinburgh to return a major collection. Heritage protection legislation existed in most Australian States. He strongly supported the policy of developing "keeping places", controlled by Aboriginal Peoples, which contained either sacred objects restricted to Aboriginal viewing or other cultural objects to be shared with their fellow Australians.

54. AIDS testing was mandatory for immigrants over the age of 15, or for younger children if they belonged to a high-risk group or had been brought to Australia for adoption. He stressed that the procedure was not prejudicial. Similar tests were carried out for cancer, heart disease or tuberculosis with a view to identifying the range of problems.

55. So far as acceptance of refugees by Australia was concerned, 11,400 had been admitted in 1987/1988, 11,300 in 1988/1989, 12,415 in 1989/1990 and 11,339 in 1990/1991.

56. He confirmed that the ninth report would be written in accordance with the Committee's guidelines. He was glad that the current reports had met with approval, but he was conscious that improvements were needed.

57. He was interested in the suggestion that a special Aboriginal commissioner should be appointed and promised to convey it to the relevant minister. Pointing out that the deaths in custody mentioned by the Royal Commission were not confined to the Torres Strait Islanders, but related to deaths in the whole of Australia, he conceded that Mr. Lechuga Hevia's question about why no action had been taken earlier was justified. The Royal Commission had recommended an ongoing review of deaths in custody. The Government had not yet formally responded to the recommendation, but would do so very shortly. It was determined that deaths in custody would be subject to careful monitoring.

58. He did not have the recommendations of the interim report of the Royal Commission to hand, but would forward them in due course. He recalled,

however, that one of its recommendations had been that there should be independent monitoring of the responses of State Governments to the recommendations.

59. Mr. Banton had asked what the situation would have been had the States not agreed to the establishment of the Royal Commission. The answer was that, while the federal Government had the authority on its own initiative to establish the Royal Commission, most of the resultant recommendations would affect State Governments, whose active participation was therefore essential in ensuring their implementation. With regard to the question of relations between the Commonwealth and State Governments, he said that, in the specific case of Queensland, the efforts made by the previous Government had been less than satisfactory with regard to implementing the Convention, but that it was hoped that they would be stepped up by the current administration.

60. Mention had been made of Toomelah and Mornington Island, and in that connection he wished to point out that reports prepared by non-governmental organizations such as the World Council of Churches tended to focus on local issues at the expense of the wider, national considerations taking into account the issues of hundreds of local situations. In the case of Toomelah, while much remained to be done, great improvements had been made in the fields of housing, roads, sewage and public health.

61. In reply to Mr. Banton's question regarding statistics for the release of Aboriginals on bail, he said that no figures were immediately available, but that they would be forwarded in due course. The same applied to his question regarding the small township of Fingal in northern New South Wales.

62. With regard to the need to modify behaviour in order to combat racism, he said that more than half the Royal Commission's recommendations were designed to bring about changes in attitude.

63. A very important question had been raised regarding the deaths of 99 people in custody. Of those 99, 30 had died by hanging, 12 from trauma, 4 from gunshot wounds and 7 from other external wounds. An exhaustive investigation had concluded that no unlawful violence had been used, but it was recognized that measures must be taken as a matter of priority to prevent further deaths in custody.

64. The full report of the Royal Commission into Aboriginal Deaths in Custody would be made available to members of the Committee on request.

65. It should be pointed out that the proceedings of the Royal Commission had been both open and comprehensive, but that responsibility for preferring charges lay with a prosecuting authority independent of the Government. In fact some minor charges had been brought against police officers, and the cases were being considered by the relevant State and Territory jurisdictions.

66. Reference had been made to the question of the decriminalization of drunkenness, which had been recommended by the Royal Commission in its report. So far no general provision had been introduced to that effect, but the issue would be addressed as a matter of priority in the Government's response to the report.

67. The question had been raised of Australia's position with regard to the Convention on the Rights of the Child, and he was able to inform the Committee that his country had ratified that Convention in December 1990. In answer to a further question regarding the death penalty, he said that Australia had abolished capital punishment.

68. Referring to the question of the resources available to the Aboriginal and Torres Strait Island Commission, he said that the Commission had approximately $600 million at its disposal, and that the Federal Government had no direct control over the way in which those funds were spent. Of the 20 Commissioners, 17 were elected, while it was his responsibility as Minister to appoint the remaining 3.

69. Concerning the proposed space port at Cape York, he said that the decision of the federal authorities was that, if the project was to proceed, it must be acceptable to the Aboriginal community. In that connection, some improvement in land legislation in Queensland had been introduced in order to facilitate the acquisition of land on behalf of the Aboriginal people of Cape York.

70. In the context of heritage protection, he recalled that mention had been made of the old Swan Brewery case. The situation with regard to that case was that, although the former Minister for Aboriginal Affairs had issued a statement, it had subsequently been withdrawn, and that no final decision had as yet been taken. Mrs. Sadiq Ali and Mr. Yutzis had raised the question of federal authority in relation to heritage issues and the implementation of the Convention. In fact, pursuant to an Act approved in 1984, the federal Government did have the power to protect the Aboriginal and Torres Strait Islander heritage, and had done so, for example in the case of a dam-construction project at Alice Springs. It should be emphasized, however, that the first recourse in such matters should be to the State or Territory legislature. The substantive initiative in implementing the Convention was the adoption by the Commonwealth in 1975 of the Racial Discrimination Act, and that federal legislation had often proved highly effective in that area, as cases brought before the courts had shown.

71. In reply to a further point raised by Mr. Yutzis in connection with deaths in custody, he said that the underlying issue to be addressed was that of Aboriginal living conditions, which were in large measure responsible for the incarceration of Aboriginal Peoples on such a disproportionate scale. In its report the Royal Commission had given due consideration to social problems.

72. The Chairman had asked about the status of legislation to give effect to the report of the Law Reform Commission. That report was both detailed and intellectually challenging, but it raised wide-ranging moral, ethical and political issues which would require further reflection.

73. In conclusion, he said that every effort would be made in future to enhance the timeliness of his country's periodic reports and to expand their scope.

74. Mr. YUTZIS said that he had difficulties with paragraph 78 of the eighth periodic report of Australia (CERD/C/194/Add.2) in that the "exceptions" to

which it made a reference seemed to be tantamount to positive discrimination, an approach which in his view was incompatible with the provisions in article 1, paragraph 4, and article 2, paragraph 2, of the Convention, which referred to "protection". In his opinion, all forms of discrimination were negative.

75. Mr. FERRERO COSTA said he shared the previous speaker's misgivings with regard to paragraph 78, and was not entirely happy with the explanations provided in connection with article 2, paragraphs 3 and 4, of the Convention, which were more limited in scope than had been suggested.

The meeting rose at 6.15 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 917th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

- Sixth, seventh and eighth periodic reports of Australia (continued)
- Ninth and tenth periodic reports of Iraq
- Sixth, seventh and eighth periodic reports of Australia (concluded)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Sixth, seventh and eighth periodic reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2) (continued)

At the invitation of the Chairman, Mr. Tickner, Mr. Walker, Mr. Gray, Mr. Barker, Mr. Chapman, Mr. Thomson, Ms. Blair, Ms. Schmider and Mr. Milner (Australia) took places at the Committee table.

1. Mr. FERRERO COSTA said he failed to see in what way the exceptions to the prohibition of discrimination set out in paragraph 78 of the eighth report were, as the Australian delegation had asserted the previous day, consistent with the provisions of article 1, paragraphs 3 and 4, of the Convention, and requested clarification of that point.

2. Referring to the need to harmonize anti-discrimination legislation, he pointed out that in the event of inconsistency, the Convention took precedence over federal laws and the latter over the laws of States.

3. In that connection, he was surprised that the Equal Opportunity Act (paras. 74 and 75 of the eighth report) adopted by Western Australia had not been repealed or amended, since it gave a far more restrictive definition of racial discrimination than that contained in the Convention and in the federal Act of 1975.

4. He further considered it abnormal that political or other considerations should play an important part in any decision by the federal Government to invalidate, or otherwise, a State law that was inconsistent with a federal law (para. 11). In his view, if a law was inconsistent, it should be repealed regardless of any other consideration.

5. Mr. WALKER (Australia), replying to a question by Mr. Wolfrum on immigration, said that he had at his disposal detailed statistical tables covering recent years and including figures on immigrants of Asian origin.

6. As to the recent amendments to the legislative provisions concerning immigration, they were mainly of a procedural nature, one of their purposes being to prevent illegal immigrants from unduly postponing their departure by means of procedural tactics. In any case, the amendments had nothing to do with racial discrimination.

7. In reply to a question by Mr. Vidas on the declaration provided for in article 14 of the Convention, he explained that the federal Government had been considering making the declaration for several years, but first wished to secure the agreement of all States. The federal Government could, of course, proceed without the States' endorsement, but that would involve a number of practical and political difficulties which it would rather avoid. In any case, the federal Government would be reconsidering the question, especially now that it had ratified the first Optional Protocol to the International Covenant on Civil and Political Rights.

8. He pointed out that the exceptions referred to in paragraph 78 of the report were not contrary to the Convention, since they came under the scope of article 1, paragraph 4.

9. His reply to Mr. Ferrero Costa's suggestion that the political considerations referred to in paragraph 11 might prevent the federal Government from complying fully with its obligations under the Convention was, categorically, that they did not. Paragraph 11 explained why the federal Government preferred to achieve its ends by securing the support of the various States rather than by imposing federal legislation, as the Constitution authorized it to do.

10. In any event, the Racial Discrimination Act 1975 applied to the whole of Australian territory, irrespective of similar laws that might be enacted by the various States.

11. When the law of a State was inconsistent with a federal law, the State law was invalid to the extent of the inconsistency and it was for the courts and not for the federal Government to give a ruling.

12. Returning to the question of the exceptions referred to in paragraph 78, he was sorry he could not say whether the exceptions had been invoked in the courts or what the federal Government's view was on the subject. In any event, however, it was the federal Act of 1975 which took precedence over State laws to the extent that they were inconsistent with the provisions of the Convention.

13. The CHAIRMAN thanked the Australian delegation for the high quality of its report and expressed appreciation of its constructive dialogue with the Committee.

Mr. Tickner, Mr. Walker, Mr. Gray, Mr. Barker, Mr. Chapman, Mr. Thompson, Ms. Blair, Ms. Schmider and Mr. Milner (Australia) withdrew.

14. Mr. WOLFRUM conveyed to the Committee his general observations on the reports submitted by Australia. The reports reflected the efforts made by the federal Government to establish a multicultural society. That policy, which was endorsed by the majority population, might improve the overall situation of all ethnic groups, including that of the Aboriginal and Torres Strait Islander people.

15. However, it was evident from the reports and the oral introduction that further affirmative action should be taken to improve the situation of the Aboriginal and Torres Strait Islander people, especially in the areas of education, employment, housing, land rights and health services.

16. Efforts already made by the Australian Government in that regard were fully consistent with the spirit and objectives of the Convention and showed that significant progress had been made since the submission of earlier reports.

17. The Committee expected the Australian Government to pursue that policy in all the States and territories of the Commonwealth of Australia.

18. The Committee had been very impressed by the Australian delegation's concern to provide it with detailed information, especially about recent developments, and hoped that the very constructive dialogue that had developed would continue in the future.

19. Mr. BANTON said that the Committee was particularly appreciative of the fact that Mr. Tickner, Minister for Aboriginal Affairs, had attended the session at the head of the Australian delegation.

20. Mr. RESHETOV paid a tribute to the Australian Government for the high quality of its reports which reflected the progress made in the implementation of the Convention.

21. After recalling that international instruments ratified by a State took precedence, in the event of inconsistency, over the laws of that State, he pointed out that whenever the Committee had examined the report of a federal State it had been confronted with the problems raised by the delimitation of the respective powers of the federal State and the national States.

22. He therefore hoped that the Committee would adopt a clear-cut position in regard to a federal State's obligation to ensure the implementation of the provisions of the international instruments it had ratified.

23. Mr. VIDAS suggested that Mr. Wolfrum should add to the text he had proposed a sentence reflecting the idea expressed by Mr. Reshetov, namely that federal authorities had an obligation to ensure the implementation of the provisions of the Convention throughout the territory.

24. He would also like the Committee to adopt a general recommendation on that same question at its current session.

25. The CHAIRMAN said that, in the particular case of Australia, the country's representative had recognized that it was for the federal Government to see to the implementation of the provisions of the Convention in all the States of Australia. As to the general, recurrent question of the implementation of international treaties in federal States, it might be useful to request the Secretariat to prepare an information note describing, *inter alia*, how the Third Committee of the General Assembly had approached the issue.

26. Mr. VIDAS said he shared the Chairman's views, but proposed that, in the final version of his text, Mr. Wolfrum should nevertheless give some attention to that important aspect of the implementation of the Convention in federal States. The Committee might also consider the possibility of adopting a general recommendation on the question.

27. Mr. ABOUL-NASR said that the discussion might be broadened to include a study of the implementation of the Convention in occupied and non-self-governing territories.

28. Referring to the comments by Committee members on the reports submitted by Australia, he did not agree that Australian society should be described as a "multicultural" society. It was in fact a multiracial society. The

Committee had dwelt on the question of the Aboriginal people, but it should not be forgotten that Australia was host to a growing number of immigrants from different regions of the world.

29. With regard to the concept of positive discrimination, he refuted the distinction drawn between positive and negative discrimination, quoting the example of South Africa, which invoked the principle of positive discrimination to justify apartheid, a policy that was supposed to ensure the separate development of different racial groups.

30. Mr. FERRERO COSTA, supporting Mr. Vidas' proposal, suggested that the text of the observations on Australia's reports should include a passage in which Mr. Wolfrum would specify that it was the federal Government's responsibility to ensure that national laws were consistent with federal laws, which reflected the State's international commitments.

31. It would also be useful to draft a general recommendation on the particular case of federal States, an issue which so often came up in the Committee. The question of the implementation of the Convention in occupied or non-self-governing territories could be dealt with in due course.

32. Mr. RESHETOV said that States all too often invoked national legislation to evade their obligations under international law. On 5 July 1991, the Supreme Soviet had taken the decision to recognize the competence of the Human Rights Committee under article 41 of the International Covenant on Civil and Political Rights, and that of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the three procedures provided for under articles 20, 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. If the authorities had consulted all the Union republics, such an undertaking would have taken 10 to 15 years longer.

33. Mr. de GOUTTES said he fully endorsed the idea put forward by Mr. Reshetov, which had prompted a proposal by Mr. Vidas and a text drafted by Mr. Wolfrum. The fact was that the structure of States might entail disparities in the implementation of the Convention. He also sympathized with Mr. Aboul-Nasr's argument and recognized that States which had separate territories must undertake to implement, in those territories, the international treaties to which they were parties. There was, however, another problem that had often been raised - that of the responsibility of States with a "dualistic" system, in other words States in which the application of an international treaty required the prior enactment of a domestic law. There again, there was a difference between those States and States with a monistic system, in other words those in which international treaties applied directly.

34. In any event, he would be in favour of a proposal confined, for the time being, to the particular case of federal States.

35. Mr. LAMPTEY said he did not see the point of making recommendations whose content was self-evident. No State party had so far disputed the principle

that it was for States which had ratified the Convention to ensure its implementation throughout their territory. The political structure of States did not fall within the Committee's competence.

36. With regard to the views expressed by Mr. Aboul-Nasr, he considered that the principle of positive discrimination was implicitly recognized in article 1, paragraph 4, of the Convention.

37. The CHAIRMAN proposed that Mr. Wolfrum and Mr. Aboul-Nasr and other interested members of the Committee should hold informal consultations about the wording of that point in the Committee's observations on the reports submitted by Australia.

Ninth and tenth periodic reports of Iraq (CERD/C/159/Add.2 and CERD/C/185/Add.2)

At the invitation of the Chairman, Mr. Al-Douri, Mr. Al-Kadhi and Mr. Mohammed (Iraq) took places at the Committee table.

38. Mr. AL-DOURI (Iraq) expressed regret that, for reasons known to all members of the Committee, Iraq had had to submit the two reports together. The Iraqi Government was prepared to fulfil its responsibilities under the International Convention on the Elimination of All Forms of Racial Discrimination and to cooperate with the Committee with a view to establishing a constructive dialogue.

39. Despite the disasters it had suffered and the centuries of foreign occupation it had undergone, Iraq, with its rich history and civilization, had contributed a great deal to the heritage of mankind. The Iraqi people constituted a mosaic of social and religious groups united in a climate of understanding, fellowship and interaction.

40. Iraq's latest two reports on the implementation of the Convention were divided into two parts, the first describing legislative developments in the implementation of the Convention since the submission of the eighth report, and the second dealing with new developments concerning autonomy in the Region of Kurdistan during the same period.

41. Iraq wished to reaffirm the following principles: (a) Iraqi legislation prohibited the practice of all forms of discrimination on grounds of sex, race, religion or belief. That prohibition applied equally to individuals, institutions and public authorities; (b) Iraq had acceded to the International Convention on the Suppression and Punishment of the Crime of Apartheid, the provisions of which were regarded as forming part of Iraqi legislation; (c) Iraq considered that apartheid was a crime against humanity; (d) Iraqi legislation guaranteed to all citizens, without any discrimination, the right to equality and to security; similarly, all political rights were guaranteed without any discrimination on grounds of origin; (e) all the legislative enactments designed to promote the exercise of economic, social and cultural rights remained in force; (f) as had been indicated in previous reports, Iraq's educational and cultural policy applied to all citizens, without any discrimination, within the framework of Iraqi national unity, while preserving their linguistic and cultural characteristics.

42. Summing up, he reaffirmed that the provisions of article 5 of the Convention applied in Iraq to all citizens, who enjoyed the rights set out in that article without any discrimination on grounds of origin.

43. Mr. WOLFRUM said that the information given in the ninth and tenth reports of Iraq, covering the period up to 1989, was out of date. He had expected the oral introduction to supplement that information but, to his great disappointment, no further information had been provided to corroborate Iraq's undertaking to enter into a constructive dialogue with the Committee. However, the periodic report which Iraq had just submitted to the Human Rights Committee (CCPR/C/64/Add.6) did to some extent supplement the reports under consideration.

44. With regard to Iraq's ethnic composition, paragraph 4 of the ninth report stated that "general population census operations are conducted on the basis of Iraqi citizenship, without regard for any ethnic, religious or denominational distinctions". Meanwhile, according to the third report submitted to the Human Rights Committee, not only did Iraq not deny persons belonging to minorities the right to enjoy their own culture, to profess and practise their own religion, or to use their own language but also pursued positive measures in order to enable minorities to exercise their rights without discrimination (CCPR/C/64/Add.6, para. 76). He found it difficult to see how the Government could pursue such a policy without knowing the groups which made up its population.

45. With regard to article 2 of the Convention, the ninth and tenth reports stated, as the representative of Iraq had repeated orally, that Iraqi law strictly prohibited the practice of any form of racial discrimination. That prohibition was said to apply equally to individuals, institutions and public authorities. It should be emphasized that legal provisions were not enough in themselves to guarantee the rights protected under the Convention. Neither the reports nor the oral introduction provided the information required under article 9 of the Convention. He therefore asked the following questions: how many Kurds had fled the country during the war between Iraq and Iran and during the most recent war? What measures had been taken by the Iraqi Government to guarantee the security of the life, property and health of the Kurds? Since both reports covered the year 1987, could the representative of Iraq give details about the serious incidents that had taken place in the Kurdistan region in that year? Similarly, could the representative of Iraq comment on the massive use of force against the Kurdish minority?

46. Were the Shiite Muslims still being bombed and had they been prevented from receiving food aid? Finally, he asked whether it was true that sulphuric acid had been sprayed on Shiite Muslims, including women and children, and, if so, whether those who had committed such acts or similar acts or had given orders to that effect were to be tried and sentenced.

47. Since the Government of Iraq had emphasized that racial discrimination was prohibited by Iraqi law, he asked whether the legislative provisions referred to had remained in force during the recent period in which martial law had been imposed in the country.

48. In its third periodic report to the Human Rights Committee, the Iraqi Government had referred to amnesty orders decreed by the Revolutionary Command

Council. Decision No. 103, extended by decision No. 109, seemed to cover all Iraqis in north, south or central Iraq and granted pardon for all acts committed "during the riots or disloyalty", except for certain crimes such as murder (CCPR/C/64/Add.6, para. 42). Did that amnesty order apply to acts committed against the Kurds, the Shiites and the population of Kuwait during the occupation of Kuwait by the Iraqi armed forces? He recalled in that connection that international conventions applied also to all territories administered by the State party, including those which had been occupied or, as in the case of Kuwait, annexed. He would not, therefore, be satisfied with a reply to the effect that the latter question was outside the Committee's sphere of competence. It was the Committee's duty to monitor the implementation of the Convention and it was the State party's responsibility to fulfil its obligations under the Convention, regardless of any resolutions adopted by the Security Council. He also wished to know what regulations had governed the population of Kuwait while it had been occupied as the nineteenth province of Iraq, and why the latter had made no real effort during that period to protect the rights of the population in accordance with article 5 of the Convention. In addition, was it true that Iraq had attempted to change the demographic composition of Kuwait by deporting or executing Kuwaitis, and what measures had been taken to protect women, children and civilians against such acts?

49. With reference to article 2, paragraph 2, of the Convention, paragraph 5 et seq. of the annex to the tenth periodic report of Iraq dealt with the elections to the Legislative Council of the Autonomous Region of Iraqi Kurdistan, held on 10 September 1989, stating that 50 members had been chosen from a total of 174 candidates standing for election in 211 constituencies. Could the representative of Iraq explain the Iraqi electoral system, since it seemed unusual for there to be fewer candidates than constituencies? It would also be useful to know the demographic composition of the Legislative Council of the Autonomous Region and to receive additional information on the status and functions of the Legislative Council and on the relationship between that institution and the National Assembly.

50. Since paragraph 9 of the same document referred to elections of representatives to the National Assembly in April 1989, he would like to know the demographic composition of the Assembly and of the Executive Council. It was further stated in paragraphs 11, 16 and 21 that several towns and villages had been established in the Governorates of Sulaimaniya, Arbil and Dohuk. Did that mean that the Kurds had been forced to leave their traditional mountain dwellings and to settle in those new towns and villages?

51. He asked to what extent the Kurdish language was used at the political and administrative levels within and outside the Autonomous Region, whether it was used in the courts and whether interpretation was provided free of charge to those concerned.

52. He also asked the representative of Iraq to specify all the positive measures taken by Iraq to enable minorities to exercise their rights without discrimination (CCPR/C/64/Add.6, para. 76). Were other minorities (Shiite, Assyrian or Turkoman) represented in the National Assembly?

53. The reports stated that education was provided in the Turkoman and Kurdish languages. What languages were used at Salahuddin University?

54. Finally, he asked what changes would be made to the status of the Autonomous Region of Kurdistan following the talks taking place in Baghdad.

55. Mr. de GOUTTES said that, like Mr. Wolfrum, he had expected a great deal from the oral statement by the representative of Iraq, especially since the latter had substantial responsibilities and academic authority in his country. Unfortunately, the statement had not provided any clear answers. That was undeniably a matter for regret, since the ninth and tenth periodic reports of Iraq (CERD/C/159/Add.2 and CERD/C/185/Add.2) were out of date; besides, even allowing for the time-lapse, they presented the information in a theoretical, formal manner, with few references to the actual situation.

56. The Human Rights Committee, for its part, after examining the third periodic report submitted to it by Iraq, had deplored in its observations the fact that the Iraqi delegation had sought to justify the unjustifiable; the oral introduction by that delegation had not been conducive to a dialogue, and most of the questions had remained unanswered, especially those concerning the persecution of the Kurds and the Shiites. The Human Rights Committee had reproached Iraq for evading its responsibilities by arguing that the human rights violations committed on its territory could be ascribed to a war waged against it. That Committee had also rejected the delegation's assertion that the questions asked by its members were a matter for the Security Council. The Human Rights Committee had decided to pursue its consideration of the report of Iraq at its next session, requesting the delegation to change its attitude.

57. The question whether the Iraqi delegation was prepared to change its attitude and reply to questions applied to the Committee on the Elimination of Racial Discrimination as well. In that context, it should explain, for instance, how Iraq implemented article 5, paragraphs (b) and (d), of the Convention (which in fact guaranteed the major civil liberties), particularly in respect of the Kurds and the Shiites. The Committee was of course aware that Iraq was in a difficult situation and must bear that in mind, but it could expect from that country convincing explanations on alarming situations, particularly that of the Kurds, which had led the Security Council, in its resolution 688 (1991), to unprecedented recognition of the right of intervention on humanitarian grounds. The Iraqi delegation must also give convincing explanations on the massive bombardments of the civilian population, on the fate inflicted on the inhabitants of Kuwait when that country had become the nineteenth province of Iraq, on the destruction of the Shiite holy places, on the flight of hundreds of thousands of Kurds, Shiites and other persons and on the attempt to repatriate them by force, on the obstacles to movement by the Shiites (Amnesty International had spoken of the use of mines), on the treatment of opposition parties, etc. The representative of Iraq had said that his country was prepared to implement the Convention and enter into a dialogue with the Committee; explanations on all the points he had just listed should therefore be given orally at the current session or in the next written report.

58. Mr. ABOUL-NASR acknowledged that in its present difficult situation subsequent to its attempted annexation of Kuwait, Iraq found it hard to reply to the Committee's questions. It was in fact a situation from which the

entire region to which he himself belonged had suffered. Iraq was now suffering a great deal; in particular, large numbers of children, irrespective of race, lacked food and medicines.

59. With regard to the treatment of the Kurds, he pointed out that they had been entitled to certain rights which they did not enjoy in the neighbouring countries in which there was also a Kurdish population. In Turkey, for example, the Kurds were not even authorized to speak their own language. It was disappointing, however, that the rights which the Kurds were recognized as having in Iraq had not been exercised, and the reason for that should be known. He further questioned the statement by the representative of Iraq that article 5 of the Convention was fully implemented in his country. In fact, that article was fully implemented nowhere in the world, although it should be noted that an effort was being made to that effect in Iraq.

60. The delegation attending the Committee's meeting might not have any precise information about the latest negotiations between the Iraqi Government and the Kurds, but it might at least inform the Committee of what it knew. In his view, the fact that Kurds were negotiating at that very time in Baghdad and seemed to be making statements openly about the way in which the negotiations were proceeding was a step forward. Generally speaking, it was to be hoped that Iraq would embark on the future with a fresh will to implement the Convention; it was also to be hoped that the Committee might be informed at the current session of any plans to that effect.

61. Mr. VIDAS said that, after what had just been said, the best solution was for the Committee to apply article 9 of the Convention, under which it might "request further information from the States parties", the point being that the information contained in the two reports now before the Committee did not provide a valid basis for consideration. The further information requested might be considered at the next session, and he hoped that there would be evidence of constructive cooperation at that time.

62. Mr. FERRERO COSTA shared the views expressed by his colleagues on the ninth and tenth periodic reports of Iraq. He did not think, however, that it was necessary to await further information, as Mr. Vidas was proposing. Since an Iraqi delegation was present and it included the Dean of the Baghdad Law Faculty, an attempt should be made to enter into a dialogue. The delegation should reply to the questions listed by Mr. Wolfrum and Mr. de Gouttes and other members of the Committee.

63. Mr. GARVALOV said that the Committee should adopt the same approach to all reports by States parties. The information given in the ninth and tenth periodic reports of Iraq must of course be updated, but the Committee should take advantage of the presence of a delegation from that country to obtain answers to its questions.

64. If Iraq was currently in a difficult situation, it should be remembered that Iraq itself was the cause of it. Even before its act of aggression of 2 August 1990, it had not been implementing the Convention satisfactorily, and that had not escaped the Committee's attention; the Iraqi Constitution recognized the ethnic, linguistic and religious diversity of the country, and yet it was known that harsh persecution had been inflicted on the Kurds,

including the use of chemical weapons against them. He was also interested in the fate of the Jews in Iraq and would be glad if the delegation could give an answer on that subject.

65. When a country crushed the right to self-determination of another country, as Iraq had done, anything could be expected in terms of human rights violations. The International Convention on the Elimination of All Forms of Racial Discrimination did not deal with self-determination, but Iraq's practices against the Kuwaitis had involved an issue of racial discrimination which came within the purview of that instrument. The restrictions imposed at the time on foreigners living in Iraq - who, among other things, had been prohibited from leaving the country - had also raised a problem of discrimination. He would also like an explanation of how the rights of the Turkomans and Syriac-speaking peoples were respected. As to the Kurds, they were not a minority, but indeed a nation of over 10 million people - some said 16 million; they must therefore have the right to exist as a nation. He expected replies to those questions and to other questions asked by his colleagues and hoped that the Iraqi delegation would prove willing to establish a dialogue.

66. Mr. YUTZIS said that he was gratified that a delegation had come from Baghdad. He pointed out that the Committee was not a tribunal, but a body responsible for monitoring the implementation of the Convention in all the countries that had ratified it; hence the importance of hearing the Iraqi delegation's replies to the questions asked and of establishing a constructive dialogue with the representatives of Iraq in order to obtain a clear idea of the situation in that country. If the Iraqi delegation needed time to study the questions and answer them, he proposed, the agenda permitting, that the Committee should revert at a later stage to its consideration of the implementation of the provisions of the Convention in Iraq.

67. Mr. RESHETOV rejected the proposal that the dialogue with the Iraqi delegation should be suspended. He acknowledged that Iraq was in a difficult situation, but pointed out that the cause of it was the Iraqi regime itself. What had to be considered was not the political situation in the country, but the human rights situation. It was absolutely necessary to have full information on the subject, and he was therefore in favour of pursuing the dialogue with the representatives of Iraq.

68. The CHAIRMAN said that it would be useful to hear the comments of the representative of Iraq before considering Mr. Vidas' proposal.

69. Mr. VIDAS said that he was not opposed to pursuing the dialogue with the Iraqi delegation, but simply believed that it should be given time to provide the information requested, especially on the current negotiations between the Iraqi Government and the Kurdish representatives. That being said, if the members of the Committee wished to continue consideration of the situation in Iraq on the basis of the reports submitted and if the Iraqi delegation could give replies that day to all the questions asked, he had no objection.

70. The CHAIRMAN acknowledged that some statements in the reports submitted needed to be updated. For example, it was stated in paragraph 3 (c) of the annex to the tenth report (CERD/C/185/Add.2) that only "the traitor Jalal al-Talebani is excluded from the amnesty proclaimed in this Decree",

whereas it was apparent that Mr. Talebani was taking part in the current negotiations in Baghdad with Mr. Al-Barzani. It would therefore be interesting to have updated information about the prevailing situation in Iraq.

71. Mr. AL-DOURI (Iraq) first thanked the members of the Committee for their interest in Iraq, in the implementation of the Convention in that country, and in the two reports that had been submitted. He acknowledged that both reports covered a period prior to the events which had occurred since 2 August 1990. Needless to say, the situation in Iraq had changed radically and had become highly complex. That situation had already been discussed in the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Security Council and other bodies. He did not think he was required to speak on the implementation of the Convention since 2 August 1990. Moreover, most of the questions asked were of a purely political character, whereas the role of the Committee was to concern itself with discrimination based on ethnic origin, and not with political issues.

72. He noted that Committee members had reproached the Iraqi delegation for failing to provide information about the present situation. Had the delegation been apprised of those questions earlier, through the Permanent Mission of Iraq to the United Nations, it would have been able to reply to them. Iraq was always ready to cooperate with the Committee.

73. He regretted having heard it said that Iraq was the cause of the difficulties encountered. It must not be forgotten that the Iraqi people was suffering immensely. Children were dying of hunger and endemic disease and the future looked even more difficult. The question of the responsibility of the Iraqi Government had already been raised in the Security Council. What the Iraqi people needed today was assistance. He was not trying to elude the questions, but observed that some of them reflected a misunderstanding of the information contained in the first reports submitted to the Committee.

74. He could not reply to the question about the talks taking place between the Iraqi Government and the Kurds, for they were private, secret negotiations. He merely hoped that they would come to a successful conclusion.

75. The Iraqi delegation needed time to reply to the many technical questions asked.

76. Finally, with regard to the clause of Decree No. 730 to which reference had been made, he explained that the fact that Jalal al-Talebani was at present negotiating with the Iraqi Government was the result of political developments.

77. The CHAIRMAN thanked the representative of Iraq and proposed that the Committee should allow the Iraqi delegation sufficient time to reply to the many fundamental questions it had been asked.

78. Mr. SHERIFIS agreed with that proposal and reserved the right to speak when the Iraqi delegation provided the information requested.

79. The CHAIRMAN specified to the Iraqi delegation that there was no question whatsoever of entering into a political discussion.

Mr. Al-Douri, Mr. Al-Kadhi and Mr. Mohammed (Iraq) withdrew.

Sixth, seventh and eighth periodic reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2) (concluded)

80. Mr. WOLFRUM proposed that, in the concluding observations on the reports of Australia, a sentence reading: "The Committee took note of the affirmative response of the Australian representative." should be inserted after the sentence: "It may be reiterated in this context that it is the international responsibility of the federal Australian Government to ensure compliance with the obligations entered into under the Convention at all national Australian levels".

81. Mr. ABOUL-NASR thought that the addition might be made to the Committee's observations but should not take the form of a general recommendation.

82. The CHAIRMAN said that the question came under the general observations on the reports of Australia. There was no question for the time being of dealing with the matter of general recommendations.

83. Mr. FERRERO COSTA agreed with Mr. Wolfrum's proposal.

84. Mr. GARVALOV noted that the Committee had dealt mainly with the problem of Aboriginal Australians, whereas Australia was a multiracial country and other minorities would have warranted its attention. Furthermore, by confining itself to the question of the Aboriginal people, the Committee was in danger of misconstruing the situation.

85. With regard to judicial procedures, he noted that the Aboriginal people did not have direct access to the courts. They had to apply to the Commissioner who, if he deemed it necessary, referred the matter to the Human Rights and Equal Opportunity Commission which, in turn, could recommend that the complainant should be heard by a federal court. He wondered whether the other peoples living in Australia had direct access to the courts and, if so, why that was not the case of the Aborigines.

86. The CHAIRMAN recognized that the members of the Committee had concentrated on the situation of the Aborigines. It was too late, however, to go back on the subject. He was not sure how the comments that had just been made could be reflected in the records of the discussions.

87. Mr. WOLFRUM proposed that the matter should be raised when the Committee considered the draft proposal submitted by Mrs. Sadiq Ali.

88. Mr. GARVALOV said that he would be satisfied if his comments were included in the summary records of the meeting.

89. The CHAIRMAN said that that would be done and proposed that the consideration of the reports of Australia should thus be concluded.

It was so decided.

The meeting rose at 12.55 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 918th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth to eleventh periodic reports of Bulgaria

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Ninth to eleventh periodic reports of Bulgaria (CERD/C/197/Add.4)

At the invitation of the Chairman, Mr. Dichev and Mr. Koulishev (Bulgaria) took places at the Committee table.

1. Mr. DICHEV (Bulgaria) introducing his country's ninth to eleventh reports, which were contained in document CERD/C/197/Add.4, said that the reasons for the delay in submitting the most recent report would become apparent from his own statement and that of his colleague, Mr. Koulishev. In fact Bulgaria was undergoing a process of radical change in terms both of its international relations and its domestic policies, and enormous efforts had been made to build a genuinely democratic system in the country since the events of November 1989. As an integral part of its new and pragmatic policy, his Government pledged its wholehearted cooperation with the Committee in seeking the fullest implementation of the Convention in Bulgaria, but he trusted that allowances would be made in the circumstances for any shortcomings in the current periodic report.

2. At the domestic level, profound changes had been taking place: free elections had been held the previous year, freedom of expression and association were now ensured, a new Constitution had been approved by Parliament, and the transition to a market economy was under way. At the same time, it would be premature to claim that all the rights and freedoms provided by the Convention were already enjoyed in practice, and his Government was fully aware that much remained to be done in that regard.

3. Mr. KOULISHEV (Bulgaria) said the events that had taken place in Bulgaria since 10 November 1989 constituted a peaceful revolution which had made the process of democratization irreversible, despite a background of economic crisis, bitter political confrontation and ethnic tension. The changes had had a profound impact on the political, social and legal context in which Bulgaria was fulfilling its obligations under the Convention in that they proved once again that democracy, political pluralism and the primacy of law were preconditions for safeguarding human rights and freedoms and preventing all forms of racial discrimination.

4. The process of transition to democracy in Bulgaria had been so rapid that much of the information contained in the report was now out of date. The process had begun with the round-table discussions in June 1990 at which efforts had been made to reach a consensus on the most urgently-needed reforms. During the second phase, which was characterized by intense legislative activity, the National Assembly had adopted the new Constitution on 12 July 1991. The third phase was only now beginning and would involve parliamentary and local elections and further legislation aimed at economic, social and political reform. The new Constitution reflected existing political realities in Bulgaria, even if there was still a long way to go before the country achieved a genuine and deeply-rooted democracy.

5. Bulgaria now had a democratically elected Parliament, President and Government. Political and trade union pluralism was evident from the emergence of approximately 80 registered political parties, some 10 of which were represented in Parliament, and a number of trades unions, all independent of the State. The press and other media were free, and important steps had been taken towards a market economy. He regretted that he would not be able to make available the text of the new Constitution in languages other than Bulgarian until the following week, and said that he would outline the constitutional, legislative and administrative provisions which related directly to the obligations arising under the Convention and were not mentioned in the report.

6. In that connection, reference should be made to the Agreement of 3 January 1991 in which the political forces represented in the National Assembly had stated that the process of democratization and humanization of society required, inter alia, recognition of the political, ethnic and religious diversity of the citizens of Bulgaria, fulfilment of the country's international obligations in the human rights field, and prohibition of incitement to nationalist, chauvinist and extremist acts, in addition to prohibition of any form of pressure applied to citizens exercising their right to determine the ethnic or religious community to which they wished to belong. The same political approach had been adopted in the drafting of the new Constitution, which reflected the entire spectrum of civil, political, economic, social and cultural rights and, in particular, the principle of equality and non-discrimination, which was affirmed in article 6 of that instrument. Article 44, paragraph 2, specifically banned organizations inciting racial, national, ethnic or religious hatred. A further direct link with the issues covered by the Convention was to be found in the Constitutional provisions on the prohibition of forced assimilation, the citizen's right to study and use his mother tongue and to develop his culture according to his ethnic allegiance, and the inadmissibility of establishing political parties with an ethnic, racial or religious basis.

7. It was, of course, one thing to proclaim a right in the Constitution or in legislation, and quite another to ensure that all citizens were able to exercise it. One extremely negative aspect of the totalitarian regime had been the gap between the law and its practical application, and one of the most important and urgent tasks on the country's agenda was to bridge that gap.

8. A major problem affecting the implementation of the Convention related to the demographic breakdown of the population. Before 1986 the Bulgarian reports had indicated the existence of various ethnic, linguistic and religious minority groups in Bulgaria. However, the censuses taken since 1975 had disregarded ethnic, linguistic and religious affiliation, so that there were no reliable data on the numbers of those minority groups. Bulgarians undoubtedly constituted the vast majority of the population. While most Bulgarians who were believers belonged to the Orthodox Church, the Pomaks, who were Bulgarian by ethnic affiliation, language and traditions, were Muslim. Other Bulgarians were Catholic or Protestant or belonged to various religions which were less widely represented in the country. Numerically, Bulgarian Turks constituted the largest minority ethnic group; most of them regarded themselves as ethnic Turks, even though many were the descendants of Bulgarians who had been forced to become Turkish during the five centuries of

Ottoman rule. Other less numerically significant ethnic-religious groups were the Gypsies (some of them Muslim and others Christian), Armenians and Jews, in addition to smaller population groups such as Russians, Greeks and Tatars. Precise data on the country's demographic composition would be obtained from the census scheduled for December 1991, which would be carried out in cooperation with the United Nations.

9. The repression of Muslims and Bulgarian Turks and the attempt to force them to assimilate, particularly during the last six years of the totalitarian regime, had been strongly condemned by the State and public opinion after the regime had collapsed. The episode represented a sad chapter of Bulgarian history, even if the number of victims and the nature of the repression could not be compared to the ethnic strife with which a number of European countries were currently afflicted. In the previous two years a broad range of legislative and administrative measures had been introduced in order to restore rights violated during the attempted forced assimilation and to provide compensation for wrongs and injuries. In particular, the judicial procedure for the restoration of names forcibly changed had been replaced by a more streamlined administrative procedure with the amendment in November 1990 of the Citizens' Names Law, adopted in March of that year. By April 1991, some 600,000 applications for such restoration, mostly from Bulgarian Turks, Pomaks and Muslim Gypsies, had been approved.

10. In addition to the three Amnesty Laws mentioned in paragraph 4 of the report, mention should be made of the Amnesty and Restitution of Confiscated Property Law of December 1990, which enabled amnestied persons to recover their property, and of the Law of June 1991, which affirmed the political and civic rehabilitation of all persons subjected to repression during the period of forced changes of name.

11. The report mentioned the large-scale exodus of Bulgarian Muslims between May and September 1989, when some 369,000 Bulgarian citizens had emigrated to Turkey. Of that number, 155,000 had returned to Bulgaria, thus confronting his country with extremely serious social problems, particularly with regard to housing, since some of those who had emigrated had been obliged to sell their accommodation or to cancel their leases. Those who returned had applied for reinstatement of their rights to the accommodation of which they had been either owners or tenants. Of the 2,270 applications received by June 1991, 1,091 had been complied with, but settlement of the other cases was rendered especially difficult by the country's highly critical economic situation. Recently, however, the Council of Ministers had enacted a statute aimed at resolving the problem.

12. Articles 13 and 37 of the new Constitution affirmed the right to freedom of thought, conscience and religion and urged the State to contribute to tolerance and mutual respect between believers and non-believers, in addition to establishing the separation of Church and State and affirming the inadmissibility of using religious communities and institutions for political ends. Since the end of 1989, measures had also been taken to restore the religious freedoms of all Bulgarian believers, and particularly Muslims, affected by various restrictions under the old regime. There were now 920 mosques in the country, and approximately 3,500 Christian churches of all denominations. In 1990 an Islamic university had been opened, as well as a Muslim religious secondary school. Religious literature of all beliefs

was published and freely disseminated. The State subsidized the Muslim communities and the restoration and upkeep of Muslim cultural monuments.

13. The restrictions imposed on the use and study of the Turkish language in the final years of the totalitarian regime had been lifted.

14. Article 3, paragraph 2, of the new Constitution established that the official language of the country was Bulgarian. At the same time, article 36, paragraph 2, affirmed the right of all citizens whose mother tongue was not Bulgarian both to use their own language and to study Bulgarian. It was also stipulated that the cases in which use of the official language was obligatory would be established by law. No restrictions were imposed on the study of languages outside the national school system, and Parliament had entrusted the Government with the introduction in 1991 of the optional study of Turkish in the public schools in regions where such an option was requested by parents and pupils. As a preparatory measure, study of the Turkish language had recently been introduced on an experimental basis in a number of schools, with the participation of 264 pupils in 18 districts. The results of the experiment appeared to be satisfactory. In addition, the study of minority languages was being promoted by the free circulation of magazines in Turkish and Armenian and by the activities of cultural organizations.

15. The ethnic problems confronting Bulgaria were by no means easy to resolve, and the fact that they had been disregarded and concealed under the totalitarian regime had contributed to dangerous ethnic tension.

16. The dialogue established within the Conference on Security and Cooperation in Europe (CSCE), most recently at the meetings in Copenhagen in 1990 and in Geneva in 1991, had resulted, if not in a generally acceptable definition of a national minority, at least in general recognition of the great diversity of situations and legal, historical, political and economic frameworks in the field of national minorities. In the case of Bulgaria, a solution to ethnic problems, particularly with regard to the Bulgarian Turks, must take account of the traumatic effect on the Bulgarian people of five centuries of Ottoman rule. At the same time, instances of intransigence on the part of the minority itself hindered efforts to achieve national unity. His Government was convinced that the solution was to be found in the comprehensive development of democracy and the rule of law and in respect for the rights and freedoms of all people, including those belonging to ethnic, linguistic and religious minority groups. Such an approach might be gradual and complex, but it was also realistic.

17. Referring to the question of the implementation of the Convention in Bulgarian domestic law, he said that, until recently, the Convention had not been directly applicable in the Bulgarian legal system and in most cases required the adoption of appropriate provisions in Bulgarian legislation. Under the new Constitution, however, international treaties which had been duly ratified would form an integral part of domestic law and would take precedence over that law in the event of incompatibility. Certain provisions of the Convention, however, would require specific legislation in Bulgaria, particularly in respect of the criminal law. The new status of the Convention would enable an individual to invoke its provisions in proceedings before the administrative and judicial authorities in order to uphold his rights. The precedence now accorded to the Convention would be enhanced by the

establishment of a new institution provided for under the Constitution, namely the Constitutional Court, which would have the function of determining the compatibility of laws with the generally-recognized norms of international law and with the international treaties to which Bulgaria was a party.

18. Article 6 of the Convention accorded great importance to remedies available in national tribunals and other State institutions in cases involving racial discrimination. Much remained to be done in Bulgaria to ensure satisfactory implementation of that article, due to the lack of existing jurisprudence in that field and widespread scepticism regarding the impartiality of the courts. However, the new Constitution aimed to ensure both the independence of the judiciary and the impartial functioning of the courts.

19. In conclusion, he said that his Government had changed its position with regard to some of the international bodies responsible for monitoring compliance with the obligations arising under the Convention, in particular by recognizing the compulsory jurisdiction of the International Court of Justice in regard to the interpretation and implementation of the Convention, and also by recognizing the competence of the Committee to receive and consider communications under article 14.

20. Mr. de GOUTTES, country rapporteur, thanked the Bulgarian representatives for updating their country's eleventh report. Many new elements had been introduced: the adoption of a new Bulgarian Constitution providing for the direct application of international treaties under Bulgarian domestic law; legislation on an amnesty and the restoration of property; a political rehabilitation act; the possibility of testing the constitutionality of Bulgarian legislation; and the decision to conduct a new census at the end of 1991 that would provide an ethnic breakdown of the population. He had drafted his own comments on the basis of the information provided in the eleventh report, but the statements by the Bulgarian representatives reflected so much change that those comments were probably out of date and too severe.

21. He had a number of general comments on the eleventh report. Firstly he thought the Committee should welcome the general evolution towards liberalization and democratization in Bulgaria since 1989. Legislative elections had been held in June 1990, leading to the emergence of a genuine opposition; a coalition Government had been formed; the functions of chief of State and head of party had been separated; the Communist Party had relinquished its leading role; and advances had been made in the protection of civil and human rights, including the repeal of articles in the Penal Code inconsistent with human rights, an amnesty for political prisoners, restoration of the right to hold political demonstrations and to form independent trade unions, and the abandonment of the policy of forced assimilation of the Muslim minority of Turkish origin and of the accompanying repression.

22. The Committee should note with satisfaction that Bulgaria had made a point of presenting its eleventh periodic report despite the profound difficulties it was currently facing. Its willingness to cooperate with the United Nations had recently been shown during the visit to Sofia in June 1991

of the Under-Secretary-General for Human Rights, and in the conclusion of a cooperation and assistance agreement with the Advisory Services of the Centre for Human Rights.

23. He welcomed the radical change in tone in the eleventh report. During the consideration of the eighth report in 1986, a difficult discussion had taken place with the representative of Bulgaria, in particular on the subject of the policy of forced assimilation of Turkish or Muslim minorities. The Bulgarian representative had maintained that the allegations against his country had been without foundation and slandered a socialist country. It was gratifying that the eleventh report had departed from that earlier attitude. It had, in particular, condemned the Bulgarian Government's policy of discrimination against Bulgarian citizens of Turkish or Muslim origin and acknowledged that the totalitarian regime had forced its citizens to change their names in 1984 and 1985, compelling them to emigrate to Turkey in 1989.

24. It should also be noted, however, that traces of past terminological usage had found their way into the eleventh report. For example, the phrase "Turkish-speaking Bulgarian citizens and those who profess the Islamic religion" had been used in paragraphs 3 and 83 to avoid saying "Turkish minority" or "Bulgarian citizens of Turkish or Muslim origin". Certain unacceptable stereotyped expressions and sweeping statements continued to appear, such as the assertion in paragraph 1 that racial discrimination was incompatible with the ideology and social practice of the Bulgarian people, whose tolerance had been transmitted through its centuries-long history. Such assertions were not convincing. According to certain information, discriminatory attitudes in fact persisted with regard to Turkish minorities in the local administrations and in sections of the population. It was to be hoped that the Bulgarian delegation would eliminate such wording from its next report.

25. The eleventh report devoted too much attention to listing the existing provisions and gave too little attention to their actual implementation, providing no specific examples, no statistical data and no information on any relevant court decisions. Thus, it did not reply to any of the questions that had been raised by the Committee during the consideration of the eighth report. In responding to those questions in its next report, Bulgaria might wish to draw upon the advisory services of the United Nations for assistance.

26. Turning to part I of the report, he noted that Bulgaria had not taken sufficiently into consideration the Committee's updated 1990 guidelines in drafting the report, which contained no section on the social, economic, political, institutional, legal and administrative framework within which the Convention was implemented or information on changes in the population. Despite requests made during the consideration of the eighth report, the eleventh report provided no general political, social or economic information on the country, which was indispensable, given the alarming economic situation in which Bulgaria at present found itself and to which its representatives had just referred. It would be useful to know what measures had been taken to alleviate the effects of the economic crisis on the population, for instance, by increasing wages, family allowances or retirement benefits. The eleventh report also failed to provide data on Bulgaria's demographic evolution, or a breakdown of the population by ethnic groups, that information having been requested during the examination of the eighth report. Current events had

made the question of the status of minorities throughout Central Europe even more crucial. Thus, the questions already raised by the Committee in 1986 remained. For instance, could the Bulgarian Government provide figures from the most recent population censuses pending the results of the next census at the end of 1991? Could it give a breakdown of the population by ethnic groups? Did Bulgarian citizens have the right to give expression to their ethnic affiliation? Could information be furnished on the situation of the Muslim Turks, the Gypsies, the Armenians, the Jews, the Macedonians, the Greeks and other ethnic groups and on the languages spoken by each group, their level of education, their social and cultural development, the number of marriages between members of different ethnic groups and on the situation of the various religions in Bulgaria? Information would also be useful on migratory movements, particularly in the direction of Turkey following the period of forced assimilation of Bulgarian citizens of Turkish origin, who had been compelled to emigrate in 1989. Paragraphs 2 and 3 of the eleventh report discussed the various measures that had been taken to restore the rights of Bulgarian citizens of Turkish origin, but information was also needed on the nature of those measures, for example, whether they included amnesties, the right to reassume Turkish names, compensation etc., on whether persons who had been dismissed had been able to return to their employment and persons evicted to their accommodation, and on proceedings instituted in connection with the numerous human rights violations that had accompanied the policy of forced assimilation, violations that had been denounced in the 1990 report of Amnesty International.

27. With regard to part II of the eleventh report, although ample information had been provided on legal provisions, the information made available on the actual implementation of the Convention had again been inadequate.

28. With regard to article 2 of the Convention, paragraph 10 of the eleventh report stated that the Constitution and the other normative documents were binding for the local and national authorities. Yet that went without saying. It would be useful to learn whether the Declaration on the National Issue, mentioned in paragraphs 4 and 34 of the eleventh report, was binding. Paragraph 12, according to which neither Bulgarian practice nor legislation needed to be reconsidered, contradicted paragraph 2, which stated that during the period of the totalitarian regime, basic rights had been seriously violated and that the political practice had run counter to the legislation, in particular with regard to Muslim Bulgarians.

29. Concerning article 3, he paid a tribute to Bulgaria for its continued and active commitment to opposing apartheid; paragraphs 17 to 28 of the eleventh report were very complete in that regard. He noted, however, that, according to paragraph 18, article 417 of the Bulgarian Penal Code provided for the death penalty for the crime of apartheid and, according to paragraph 44, article 416 of the Code provided for the death penalty for the crime of genocide. The death penalty could not, however, be justified in connection with the protection of human rights, even in cases of the most serious violations of those rights, such as apartheid or genocide. He recalled that the Second Optional Protocol to the International Covenant on Civil and Political Rights, concerning the abolition of the death penalty, had just entered into force.

30. In respect of article 4 of the Convention, paragraph 30 et seq. of the eleventh report discussed the various sections of the Bulgarian Penal Code that provided penalties for such offences as inciting racial enmity, acts of violence or damage to property for reasons of race, participation in racist organizations, meetings or demonstrations, etc., but it did not indicate whether other racist manifestations were punishable under Bulgarian law, for example, the refusal to accord a right or provide a service for reasons of ethnic, national, racial or religious affiliation. He asked whether citizens of Turkish origin and Gypsies had not been the victims of such activities in the past and whether it was planned to improve Bulgarian legislation in that area.

31. Regarding article 5, the eleventh report referred to the right to equal treatment before the tribunals and all other organs administering justice and the right to security of the person and protection by the State against violence or bodily harm, and stated in paragraph 45 that whenever their guaranteed rights had been violated, all citizens without exception could address requests, complaints and suggestions to competent State authorities or petition the court for defence, which could not be refused them. Yet the report contained no example of legal decisions imposing penalties for violations of that principle or of any specific case. Such information should be made available in the next report. Paragraph 49 stated that access to public service was not restricted, except on the basis of such requirements as education, speciality, conviction, etc. He asked what conviction would lead to refusal of access to public service, whether the wording meant that there were other criteria justifying such refusal, and whether it was true that citizens of Turkish and Muslim origin were denied access to public office.

32. Paragraph 50 stated that no prohibition as to movement around the territory of the country had been imposed on any group of citizens and that the residence institution encompassing all Bulgarian citizens, binding them administratively to one or another settlement, had been eliminated. He inquired whether that applied in all cases.

33. Paragraph 51 noted that all citizens had the right to leave the country and to return when they had Bulgarian passports. He asked what the conditions were for obtaining a passport and what group of persons, as noted in paragraph 51, had not been allowed to obtain passports to travel abroad for certain periods of time.

34. Paragraph 70 indicated that the Constitution guaranteed citizens the right to work, but no information was provided on the actual implementation of that right, on the employment situation, the level of unemployment, the fate of citizens of Turkish origin and Gypsies, the right to work of foreign workers, etc. It should be noted that during the consideration in 1990 of the Bulgarian report relating to ILO Convention No. 111 concerning discrimination in respect of employment and occupation, the relevant committee of the International Labour Conference had not been completely convinced that the Government of Bulgaria had taken all necessary measures to comply with that Convention, in particular, as concerned the return to their place of work of those citizens of Turkish origin who had been dismissed in connection with the earlier policy of forced assimilation.

35. Where the right to housing was concerned, paragraph 73 of the eleventh report provided no precise statistical information on the actual housing situation in the country. According to that same paragraph, the State provided houses to rent for those who needed them after they had been grouped into one of five categories, and he asked for fuller information on those categories and on the criteria to which the paragraph referred. He also inquired whether the Government of Bulgaria could confirm that Bulgarians of Turkish, Muslim or Gypsy origin were not discriminated against when such housing was allocated.

36. As to the right of access to any place or service intended for public use, referred to in paragraph 78, the report maintained that no restrictive measures had been taken in that area. He asked whether that had been true under the totalitarian regime, even during the period of the policy of discrimination against Bulgarian citizens of Turkish or Muslim origin.

37. With reference to article 6 of the Convention, paragraphs 79 and 80 of the report stated that existing civil and criminal procedures enabled citizens or the prosecutor's office to initiate proceedings in cases of racial discrimination. He had two questions to ask in that regard - in what circumstances could the prosecutor's office bring actions in race-related cases, and was there any provision for collective civil or criminal actions by associations protecting the interests of particular groups?

38. The explanations given at the end of paragraph 80 on the procedure regulated by the Administrative Lawsuits Law were unclear, and he wondered whether there was not some error in the text. What was the role of that administrative procedure in relation to the civil and criminal procedures referred to in the previous paragraph?

39. The statement in paragraph 83 to the effect that no case of racial discrimination had been tried during the period covered by the report, although acts of racial discrimination had been committed, particularly against Turkish-speaking Bulgarian citizens and Muslims, and the reference to only one criminal trial, that of the former head of State, Mr. Zhivkov, prompted several comments and questions. Firstly, he wished to know whether the latter trial had been initiated and what were the judgement prospects. Secondly, the fact that no other example of conviction or even prosecution, and no data on the filing of complaints, had been given, was one of the most regrettable omissions from the eleventh report. The only figure given - in paragraph 84 - concerned the number of applications to restore names that had been changed by force, about which the Committee had been informed, moreover, that some bureaucratic resistance had been encountered. Explanations were needed as to why, when acts of discrimination had clearly been committed before 1989, no complaints had been registered and no trials held, apart from that of Mr. Zhivkov. Was it because the victims had not dared to file complaints, or had not known how to do so? Had the complaints been simply filed and disposed of? Had the complainants been refused legal remedies? Information on that subject should be provided in Bulgaria's next report.

40. With reference to article 7 of the Convention and paragraphs 87 and 89 of the report, he wished to know whether the constitutional provision that citizens of non-Bulgarian origin had the right to study their mother tongue was applied in practice, and whether any figures were available on the number

of Turkish-speaking pupils studying Turkish as a vernacular language. In paragraph 93, the report referred to major cultural activities and events organized regularly in regions with a large Turkish-speaking population, even between 1986 and 1989. Given the fact that they had been held at the height of the harsh policy of forced assimilation of citizens of Turkish origin, the credibility of that information was in doubt. Was it not to be feared that the cultural events organized at the time had in fact been an occasion for totalitarian propaganda?

41. In conclusion, the many questions asked were evidence of the Committee's great interest in Bulgaria's report and in the liberalization process. That the Committee should ask such questions and expect a reply - something which could scarcely have been hoped for in the past - was a tribute to the democratization of Bulgaria and a token of trust in its will to pursue the liberalization process, bearing in mind the exceptional difficulties experienced by the country in effecting that transition.

42. Mr. WOLFRUM associated himself with Mr. de Gouttes' comments and findings and welcomed Bulgaria's dialogue with the Committee. He, too, had noted the discrepancy between the disappointing written report and the commendably explicit oral presentation. To judge from the Bulgarian representative's reference to ethnic composition data to be derived from the forthcoming national census, he assumed that the census survey would contain a question relating to membership of ethnic groups, and he would like to know whether the applicable criterion for membership of such a group was self-identification, or whether other criteria were considered. It might be remembered that the Committee favoured the criterion of self-identification.

43. He commended the attitude reflected in the Bulgarian representative's reference to a number of minority groups not mentioned in the written report. He sought confirmation of his understanding that political parties could not be formed on an ethnic basis, and asked why that was the case.

44. The frequent references by the representative of Bulgaria to "national unity" prompted the comment that national unity, to which all countries aspired, should not mean the assimilation of ethnic groups, but could best be achieved and enhanced by preserving and protecting the cultural identity of all groups. Minorities had rights and also obligations, as spelled out at the Copenhagen meeting of CSCE. The reference by the Bulgarian representative to the rule of law as offering the only genuine protection of ethnic groups prompted the comment that the implementation of rules and regulations must be overseen by an impartial, independent judiciary. He looked forward to the next report for further details of the new legal system.

45. Mr. VIDAS associated himself with the conclusions reached and questions asked by Mr. de Gouttes. It should be borne in mind that the report of Bulgaria was that of a country in transition, and he looked forward to the twelfth report, which he hoped would be submitted punctually and would provide a full picture of the profound democratic changes taking place in Bulgaria; democratization would inevitably have a positive effect on that country's implementation of the provisions of the Convention. The Bulgarian Government should follow the Committee's guidelines in drafting the report, which should reflect the de facto as well as the de jure situation in the country. He,

too, trusted that the forthcoming national census would provide the data essential to a proper consideration of the report by the Committee.

46. Paragraphs 1 and 16 of the eleventh report gave the impression that the authorities' approach was not sufficiently self-critical, since in practice no society was free from racial discrimination.

47. Was there any legislation recognizing the existence of minorities in Bulgaria? It was not clear whether any group could be defined as a minority on the basis of existing legislation. Reference had been made in the Committee to the CSCE meeting in Copenhagen and its implications for the identification and definition of minorities. Recognition of the existence of a minority was an underlying principle of the Convention; should that principle be denied, there would be no possibility of granting rights to a particular sector of the population entitled to such rights.

48. It would be most useful if the Committee could receive a copy of the very important Declaration on the National Issue adopted in January 1990 and referred to repeatedly in the report.

49. In addition to Mr. de Gouttes' comments on paragraph 12 of the report, he asked how the authorities could explain the well-known events involving Turkish-speaking Bulgarian citizens if, as was stated in paragraphs 12 and 16, practice and legislation had always been consistent with the Convention and required no rectification. He also requested clarification of the term "certain racial groups" in paragraph 16.

50. With regard to the very important Amendment Law to the Passports Law (paragraph 51), he wished to know which institutions were competent in those matters, whether there was any provision for a remedy, and how many cases had been registered since the adoption of the amendment in 1989.

51. Referring to paragraphs 76 and 77, he, like Mr. de Gouttes, sought clarification of the question of language and education, and asked how many students of non-Bulgarian origin actually studied their own language. In that regard, further clarification was needed of the statement in paragraph 91 to the effect that Turkish-speaking citizens could study Turkish as a foreign language. It was not clear whether Turkish was in fact the medium of instruction in the primary schools referred to by the Bulgarian representative.

52. He had been informed that an organization of Macedonians in Blagoevgrad had not been permitted by the authorities to register as a social organization. If that report was accurate, what were the reasons for the refusal, and on the basis of which legal regulation had permission been refused?

53. Mr. SONG Shuhua said that he had been concerned by the omission of any reference to changes in nationality in the written report, although the matter had been touched upon by the representative of Bulgaria in his oral presentation, which had also helped to clarify the question of citizens who were not of Bulgarian origin. He looked forward to the data that would emerge from the national census. On the subject of citizens of Turkish origin, could

it be assumed that they fell into two categories - those who were not Bulgarian citizens, but constituted Turkish minorities, and those who were originally Bulgarian citizens but had turned to Islam?

54. Like previous speakers, he pointed to the discrepancy between the statement in paragraph 12 of the eleventh report that it was not necessary for either the practice or the legislation to be reconsidered since they had always been consistent with the Convention, and the criticism in the report of the previous Government's policy of coercing citizens of Turkish origin into changing their names and abandoning some of their customs and traditions. He wished to know which of the former Government's practices or policies were not in keeping with the Convention, in what way the situation was changing or had already changed, and, specifically, what measures had been taken.

55. Paragraph 89 of the report referred to 4,000 Turkish-speaking teachers and to 1,200 teachers and schoolchildren who had left Bulgaria for Turkey. Of those who had reportedly returned, he wished to know how many were teachers, since their presence was obviously crucial if students of Turkish origin were to be able to learn their language.

56. Finally, in the context of the forced name-changing policy, it would be of interest to know whether relations between Turkish-speaking citizens and other Bulgarian citizens had now improved.

57. Mr. BANTON, after expressing his pleasure at the improved attitude displayed by the Bulgarian Government in its eleventh report, asked what view it took of the application of article 2, paragraph 1 (e), of the Convention, which concerned integrationist multiracial organizations, eliminating barriers between races. He asked what organizations of that kind existed in Bulgaria and how they functioned. He hoped that Mr. Koulishev could answer that they existed, that they were independent of the Government and so healthy that the Government was not involved with them. But "independent" meant that they did not need to be registered by the State and he wondered if that was the case. Mr. Dichev had spoken of freedom of association, which suggested that such organizations should not need to be registered. Pointing out that "integration" was originally a mathematical term, he said that the component parts of society were of unequal power, which determined how they bargained over their future position. He therefore wanted to know on whose terms integration was achieved, whether on those of the Government or of the organizations. Successful negotiation over time required "political pluralism", as Mr. Koulishev had said, which in turn called for tolerance. He hoped Bulgaria was tolerant towards such groups. He asked whether it would show them a copy of the eleventh report or of the following discussion. He suggested that the United Nations Information Centre in Sofia might in future be better equipped to provide information for such organizations, particularly with regard to article 6: remedies had to be both available and effective. The way to establish whether that was the case was to ask the organizations themselves and to incorporate their answers in the twelfth report. He asked whether, as potential victims of abuse, they knew what remedies were available, where to find out about them and who would bear the cost. Stressing that it was not necessarily a question of ethnic political parties, though common ethnicity might be one aspect of them, he said that if the Government could find a role for such organizations, it would be a welcome contribution towards achieving the purposes of the Convention.

58. Mrs. SADIQ ALI, after commending Mr. de Goutte on his detailed analysis of the report, asked whether the Turkish community had been allowed to vote in the 1989 elections. Referring to the statement by Bulgaria that 155,000 Turks had returned, she said that the Committee's estimate had been that 300,000 had fled to Turkey. If her information was correct, she asked what had happened to those who had not returned and whether their return would depend on the availability of housing. She also wished to know what effect the new guarantee of freedom of expression and of association would have on the implementation of article 4 of the Convention and expressed the hope that a reply would be forthcoming in the next report. Given the weakness of the Bulgarian economy, her next question was whether any elements of the welfare State were still in force since the introduction of the market economy. Finally, with reference to article 7, she asked what was being done to sensitize magistrates and the police to the problems of minorities, particularly the Turkish community, and whether steps would be taken to educate the public regarding the Convention.

59. Mr. FERRERO COSTA said that the contradictions in the Bulgarian report, already pointed out by his colleagues, were the marks of a country in transition; but they represented positive changes, reflecting a new respect for human rights and sincerity. Both the written report and the oral presentation were based on the new Constitution and new standards, but the next report should indicate how the new policies were actually working and avoid repeating such sweeping assertions as, for example, that racial discrimination did not exist. They should follow the Committee's guidelines and present a report which reflected real life, not the desires of the Government. The next census would be useful, as containing a real ethnic breakdown of the population. He asked, first, what the current situation of the Turkish minority was in its relations with other Bulgarians and whether there had been any social or cultural improvements. He also wished to know how the Law of the State Liability for Damage Inflicted on Citizens, mentioned in paragraph 82, was enforced. Would the Government indemnify people whose rights had been violated under the previous Government or would the law apply only to future damage?

60. Mr. RESHETOV, congratulating Bulgaria on taking the path of democracy after years of totalitarianism, said that the presence before the Committee of Mr. Koulishev, who held a high Government post, showed Bulgaria's respect for the Committee. Democracy was a harder road to follow than totalitarianism, under which there was no need to think for oneself. Conventions could be signed and then ignored, as he knew from the former experience of the USSR. Since such societies were in theory the most advanced in the world, new laws to accommodate international standards had been deemed superfluous. Some of the new positions adopted, however, perhaps went too far. Thus, paragraph 8 of the eighth report seemed to promise unnecessarily full rights to foreigners, and it was later contradicted by paragraphs 40 and 49. Referring to the provisions of article 52, paragraph 4, of the 1990 Constitution, quoted in paragraph 30 of the report, he questioned whether Bulgaria needed to be concerned about its "territorial integrity" (whatever that meant). The integrity that mattered was that defined by the right to freedom of expression and association. With respect to paragraph 49, he asked what kind of conviction was meant and what kind of post conviction might preclude a person from holding. The provision was open to abuse. Regarding paragraph 52, he

wished to know what kind of freedom of movement was allowed to foreigners. Also, did the abolition of censorship mentioned in paragraph 64 include such sensitive issues as military matters?

61. He congratulated the Government on the improvement in its dealings with the Turkish and Muslim minority. But, referring to paragraph 84, he asked why members of that minority had to go to court in order to have their original names restored. The process could be difficult and expensive. Finally, he applauded the section on education and teaching, but was concerned by the final words of paragraph 91, where the words "all foreign languages" implied discrimination against the Turkish community.

62. The CHAIRMAN said he shared the general sense of relief at the new attitude regarding human rights in Bulgaria. He was sure that the inconsistencies that had been noted would be ironed out in the next report. Specifically, clarification was needed of paragraph 7, which should be amplified by examples, and of paragraph 84. He endorsed Mr. Reshetov's remarks concerning the restoration of original names and also asked how many applications for restoration of names had actually been granted, as opposed to being filed or examined.

The meeting rose at 5.55 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 919th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 8 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. VIDAS
Mr. SHAHI
Mr. VIDAS

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Organization of work (continued)

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth to eleventh periodic reports of Bulgaria (concluded)

The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK (continued)*

1. The CHAIRMAN informed the members of the Committee that the Bureau had received a request by the Government of the Ukrainian Soviet Socialist Republic for postponement of consideration of its eleventh report, which, having been submitted very shortly after the consideration of the tenth report by the Committee at its spring session, did not contain the replies to the questions asked by the members of the Committee. The Ukrainian Government would therefore like to complete it. Considering the request justified, the Bureau recommended that the Committee should accept it. If there was no objection, he would take it that the Committee accepted the request of the Ukrainian Soviet Socialist Republic.

It was so decided.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Ninth to eleventh periodic reports of Bulgaria (CERD/C/197/Add.4) (concluded)

At the invitation of the Chairman, Mr. Dichev, Mr. Koulishev, Mr. Dobrev, Mr. Sotirov and Mr. Kobarelov (Bulgaria) took places at the Committee table.

2. Mr. DICHEV (Bulgaria) thanked the members of the Committee for the attention they had paid to the Bulgarian report, to the oral statements of the Bulgarian delegation and to the situation in the country. He expressed his appreciation of the understanding that the Committee had shown of the efforts being made by his Government and society to restore human rights and fundamental freedoms. He recognized that there were a number of discrepancies between the written and oral statements, the report having been drafted just before the new Government had come to power at the beginning of 1991.

3. Any statement in the report asserting that there was no racial discrimination in Bulgaria or that implementation of the Convention posed no problems should be considered null and void. His delegation officially retracted paragraph 12 of the report (CERD/C/197/Add.4), because it did not reflect the truth. The Bulgarian delegation had been instructed to submit to the Chairman of the Committee and to the United Nations Secretariat written texts of the statements that Mr. Koulishev and he himself had made to the Committee in order to supplement the Bulgarian report. Lastly, he noted that, during an official visit to Bulgaria in June 1991, the Under-Secretary-General for Human Rights had signed a cooperation agreement with the Government of Bulgaria in the field of human rights, pursuant to which all international human rights instruments, as well as the booklet entitled "ABC Teaching human rights", would be published as soon as possible in Bulgarian so as to

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* Resumed from the 915th meeting.

acquaint the Bulgarian people with its rights and obligations. The Bulgarian authorities had also agreed with the Under-Secretary-General that a seminar would be held in Bulgaria later in the current year for law enforcement officers, members of the judiciary and members of the diplomatic staff of the Bulgarian Ministry of Foreign Affairs to consider practical measures relating to human rights.

4. In conclusion, he once again thanked the Committee for assisting the Bulgarian people in its quest for democracy and in its efforts to combat racial discrimination.

5. The CHAIRMAN thanked Mr. Dichev for his statement. The Bulgarian delegation had greatly enhanced the dialogue between Bulgaria and the Committee, and the spirit in which it had replied to the Committee's observations augured well for future collaboration in the fight against racial discrimination in Bulgaria.

6. Mr. KOULISHEV (Bulgaria) said he wished, first of all, to express his gratitude to Mr. de Gouttes, the country rapporteur, whose clear, objective and in-depth analysis of the Bulgarian report had served as a basis for the discussion, and to all the members of the Committee for the comments they had made and the questions they had asked concerning the report. His delegation fully understood and appreciated the critical observations made, which showed that the Committee had confidence in Bulgaria's determination to improve its implementation of the provisions of the Convention and in its ability to achieve that end. Some of the questions asked required precise answers, which would be provided in the next periodic report.

7. Responding to the comments by Mr. de Gouttes, Mr. Vidas and Mr. Ferrero Costa on the general presentation of the report, he acknowledged that it was mainly based on legal texts and not sufficiently on the facts. The collection of the information required had met with difficulties, and it might be useful to have an exchange of views on that subject with the United Nations advisory services. He also recognized that the comments on the excessively categorical tone of certain statements maintaining that there was no discrimination in Bulgaria were well-founded. The past continued to weigh heavily on the report, parts of which had been drafted at the beginning of the previous year.

8. As for the lack of detailed information on the economic situation of Bulgaria, to which Mr. de Gouttes had referred, he stated that the country was currently going through a very serious economic crisis, which was not without consequences for the implementation of the provisions of the Convention. Output had fallen by 17 to 22 per cent, the foreign debt had reached $11 billion, and 250,000 persons were unemployed, a figure that was expected to grow to 400,000 by the end of the year. Although its participation in the United Nations sanctions against Iraq had cost it nearly $2 billion, Bulgaria had continued to support the relevant United Nations resolutions unreservedly. With respect to the measures adopted for the transition to a market economy, Bulgaria had completed the first stage, financial reform, and was currently embarking upon the reform of economic structures, for which it would have to mobilize all its economic and human resources, but which could not be achieved without the assistance of the international financial organizations and the developed countries. In recent

months, the Bulgarian Parliament had adopted much economic reform legislation, including laws on land ownership, cooperatives, the national bank and foreign investment. A privatization bill was being drafted.

9. As for social measures, the Government was collaborating with the trade unions in the framework of a tripartite commission in order to improve the situation. Compensatory measures were to be adopted to assist the poorest segments of the population, the standard of living having fallen perceptibly in recent months.

10. In reply to Mr. de Gouttes' question about Bulgaria's demographic composition, he stated that the last census, carried out in 1975, had shown that there were about 630,000 Turks, 183,000 Gypsies, 14-15,000 Armenians, 9,000 Russians, 6,000 Tartars, 4,500 Greeks and 11,000 persons of other ethnic groups in Bulgaria, out of a total population of 8,700,000, and that 8,300,000 persons spoke Bulgarian, 400,000 spoke Turkish, 1,100 spoke Romany and about 6,000 spoke other languages.

11. As for the right to express one's ethnic affiliation, he recalled that article 28 of the Constitution prohibited forced assimilation and that the first paragraph of article 54 proclaimed the right to develop one's culture in conformity with one's ethnic affiliation, a right that was legally recognized and guaranteed.

12. Concerning Mr. Wolfrum's question as to the way in which the forthcoming census would be carried out, with particular reference to the questions on ethnic, linguistic and religious affiliation, he said that the forms had been prepared in consultation with the United Nations. The respondents alone would determine their ethnic group, mother tongue and religion. Under the heading "Ethnic group", the respondents could choose from among a dozen groups and, if the group to which they belonged was not mentioned, they should enter its name. The same applied to the questions on mother tongue and religion. Bulgaria would continue to cooperate with the United Nations until the results of the census were established.

13. Turning to the question asked by Mr. de Gouttes about mixed marriages, he said he had no statistical data available and it would be necessary to await the results of the census. Mixed marriages were very frequent among the Armenians and Jews, those two communities being fully integrated into Bulgarian society, whereas they were rarer among the Turks and Gypsies, the latter group living somewhat on the fringe of society, despite the efforts made by the State. The category of nomadic Gypsies had entirely disappeared, and the problem of housing the Gypsies had been resolved.

14. With regard to the emigration of Bulgarian citizens to Turkey, he said that, of the 360,000 Bulgarians who had emigrated there between May and September 1989, 160,000 had returned to Bulgaria. Since that mass exodus, the movement had continued in both directions: for every three Bulgarians who left for Turkey, one returned to Bulgaria. All Bulgarian citizens were free to emigrate: an exit visa was no longer necessary. On the other hand, Turkey posed certain conditions for entering its territory, the more so since immigration was causing it economic and social problems. Bulgarian citizens were also free to return to Bulgaria; their return was facilitated by the fact that, under the amended nationality law, they could have dual nationality, and

most of them had retained Bulgarian nationality. The mass emigration that had taken place in 1989 had not been triggered solely by repression; it had also had economic causes.

15. Replying to a question asked by Mrs. Sadiq Ali on the participation of Turks in the 1990 elections, he said that the Turks had voted in large numbers in what were the country's first free and democratic elections. There were approximately 20 Turkish deputies, representing the Movement of Rights and Liberties. The right to vote, enjoyed by all Bulgarian citizens, was not subject to any discrimination.

16. Replying to a question asked by Mr. de Gouttes and expanded upon by Mr. Ferrero Costa concerning the prosecution of human rights violations and measures adopted to redress grievances, he said that redress could be obtained administratively rather than through the courts. It was not certain that proceedings would be instituted against the former head of State and some of his collaborators for attempting forced assimilation since another action against him for financial malpractices had to be suspended because of his state of health. The legal basis for such proceedings had been discussed in Parliament and some deputies, particularly those representing the Movement of Rights and Liberties, had taken the view that proceedings could be instituted on the basis of a charge of genocide. It was very doubtful, however, whether such an accusation could be upheld against the authors of the attempt at forced assimilation. It would be possible to invoke some provisions of the Criminal Code, such as article 162 on incitement to racial hatred, but the punishment provided for in such a case was minimal. Needless to say, it had also been proposed to adopt new legislation to try the authors of the attempt at forced assimilation and other acts of repression committed over the past three or four years, but a person could be convicted only on the basis of the laws that were in force when the offence was committed. A whole range of measures had been adopted to restore fundamental rights and the attempts at forced assimilation had been condemned by the Government, the Parliament and the political parties. All prohibitions relating to ethnic groups and religion had been repealed and a number of amnesties had been proclaimed.

17. As for the property of the Turks returning to Bulgaria, the decree adopted by the Council of Ministers on 1 August 1991 provided that property belonging to the State could be repurchased by its former owners at the price it had been worth at the time, while property presented to the State was to be restored to its former owners. If the property no longer belonged to the State, its former owners were entitled to receive identical property or compensation for its value. All those problems would be settled by special commissions, whose decisions could be reviewed by the courts. The decree did not, however, exclude direct restitution by court order.

18. As for the possible abolition of the death penalty, Parliament had decided, after a long discussion on the question, to postpone a decision until it considered the new criminal code. In any event, it would appear that public opinion was not currently in favour of abolishing capital punishment. It should also be mentioned in that connection that, in November 1989, it had been decided to postpone _sine die_ the execution of persons sentenced to death.

19. Acts of racial discrimination and, consequently, the denial of a person's rights because of his ethnic affiliation or a refusal to employ him for the

same reason were considered to be offences punishable under the Criminal Code, and the rare forms of racial discrimination that had not been included as offences under the existing Criminal Code would be so defined under the new code, to be adopted shortly.

20. There were undoubtedly tensions between the Gypsy community and the general population; for example, in one quarter of the city of Plovdiv, non-Gypsy inhabitants had been forced by the Gypsy community to move away. The problems encountered by that community were primarily of a social nature, and a disquieting increase in the crime level among Gypsies had been observed. It was to be hoped that the efforts being made would enable those problems to be gradually resolved, but the task would not be a simple one.

21. As for the Declaration on the National Issue, adopted by the National Assembly on 15 January 1990, it did not, unlike legislation and decrees, have the force of law but it had had an important political impact, as events had shown. Adopted by the Parliament because of the dissatisfaction with the decision to restore their names to persons who had been forced to change them in the 1980s, the Declaration had resulted in a lowering of tension.

22. The fact that no complaints of racial discrimination have been submitted to the courts was probably due to a lack of confidence by the general public in the legal system.

23. Freedom of movement was henceforth recognized in the Constitution. The formalities for obtaining a passport had been simplified considerably to the extent that the problem facing Bulgarians was not that of leaving the country or returning to it but of obtaining entry visas for the countries to which they wished to travel.

24. Concerning access to public service, to which reference was made in paragraph 49 of the report (CERD/C/197/Add.4), the word "conviction" in the second line of the paragraph should be replaced by the words "criminal record".

25. In respect of the right to housing (para. 73), he said that the allocation of housing was based solely on economic and social criteria. The right of access to any place or service intended for use by the general public could be exercised at all times. As they had a legal status, human rights associations could initiate the proceeding referred to in paragraph 80.

26. In his view, most of the cultural events held between 1984 and 1989 had, by and large, been free of any propaganda element.

27. To Mr. Wolfrum's question whether political parties could be formed on an ethnic or religious basis, he replied that the Constitution and the Political Parties Law expressly prohibited the creation of such parties. That, incidentally, posed a problem for Bulgaria which, when it came to ratifying the European Convention on Human Rights, would probably enter a reservation on article 14.

28. The vast majority of the political parties took the view that parties established on an ethnic or religious basis were working, in one form or another, for separatism. Needless to say, the prohibition did not prevent a given ethnic or religious group from being represented in Parliament or in local government. Members of those groups could be included in the political parties' lists or could establish, in accordance with electoral law, organizations that were entitled to put forward candidates for election to defend de facto the groups' interests as evidenced by the Movement of Rights and Liberties, which represented the Turkish community and constituted the third largest parliamentary group. It should, however, be pointed out that the new electoral legislation currently being drafted would be based on proportional representation, and would make it difficult for organizations to put forward candidates.

29. However that might be, independent candidates could stand for Parliament if they collected at least 2,000 signatures. In that way, the various ethnic and religious groups could be represented in Parliament.

30. In reply to a question by Mr. Wolfrum and Mr. Reshetov, he said that the fact that the principles of the unity and indivisibility of the nation and the State had been included several times in the Constitution certainly did not mean that the State intended to assimilate the various ethnic groups. It was recognized that the Bulgarian nation was made up of very different components, and it would be for the Parliament and the judiciary, including the Constitutional Court, to define further that concept of national unity.

31. Mr. Vidas had asked whether Bulgarian legislation recognized the existence of minorities, and the answer was that the word "minority" was not used for the ethnic and religious groups concerned because the term "minority" had never been the subject of a generally accepted definition in international law. The absence of such a definition did not, however, prevent the provisions of international instruments, in particular those of article 27 of the International Covenant on Civil and Political Rights, from being implemented, inasmuch as it was not a question of terminology. In the case of Bulgaria, incidentally, it was quite appropriate to speak of ethnic, religious or linguistic minority groups. All in all, Bulgaria was deeply convinced that it was possible to find a satisfactory solution to the question of the political, economic, civil and cultural rights of all citizens, regardless of their ethnic, linguistic or religious affiliation, by treating them all on an equal footing without discrimination.

32. He informed Mr. Vidas that the reference in paragraph 16 of the report to racial groups concerned primarily the Gypsies and that the organization made up of Macedonians in the district of Blagoevgrad had not been registered as a political party because it pursued separatist objectives, which parties were prohibited from doing by the Constitution and the electoral law. However, that organization was free to continue its activities and to have contacts with foreign diplomats, though it should be pointed out that it had aroused the dissatisfaction of the majority of the population in the district of Blagoevgrad.

33. As to the question whether organizations existed in Bulgaria whose purpose was to eliminate barriers between races and to discourage anything which tended to strengthen racial discrimination, as set out in article 2,

paragraph 1 (e), of the Convention, such organizations were needed wherever there were many ethnic, racial, linguistic or religious minorities but they unfortunately did not exist in his country.

34. Mr. Banton and some other members of the Committee had asked whether the Committee's report would be brought to the attention of human rights organizations in Bulgaria, and he assured them that it would. In that connection, he hoped that the Bulgarian Ministry of Foreign Affairs or the Human Rights Commission of the National Assembly would organize a debate on that point.

35. Turning to the question asked by Mrs. Sadiq Ali and Mr. Banton concerning steps taken in Bulgaria to inform public opinion about the Convention, he said that Mr. Dichev had already answered it in part when he had announced that the Bulgarian Government, in cooperation with the Centre for Human Rights, intended to publish the booklet "Human Rights: A Compilation of International Instruments". Moreover, the International Bill of Human Rights had already gone through two editions, an indication of the interest it had aroused in the Bulgarian public. Lastly, an agreement had been concluded with the United Nations with a view to setting up a United Nations information centre at Sofia.

36. To Mrs. Sadiq Ali's question about the measures adopted by the Bulgarian Government to increase the awareness by judges and the police of the problems of the Turkish ethnic minority, he replied that all the components of Bulgarian society must be treated equitably by the courts and the police, regardless of ethnic or religious affiliation.

37. Responding to a question asked by Mr. Reshetov and Mr. Shahi about the judicial procedure to restore the names of Bulgarian citizens that had been changed by force (para. 84), he said that the earlier procedure, which had proved to be very slow and complex, had been replaced by a very simple administrative formality so that, as of April 1991, 600,000 former names had been restored.

38. Mr. Shahi had asked how international standards were applied in the Bulgarian legal system (para. 7). The answer was that, unlike the former Constitution, the new one provided for direct application in the domestic legal system of all international agreements that had been ratified and had entered into force, such as the International Convention on the Elimination of All Forms of Racial Discrimination.

39. In conclusion, he said he hoped he had answered the questions asked by the members of the Committee while reserving the possibility for his Government to reply in greater detail to some of those questions in its next periodic report.

Mr. Vidas took the Chair.

40. The CHAIRMAN thanked the Bulgarian delegation for its oral presentation and, on behalf of the Committee, expressed the hope that the comments made

during consideration of the eleventh report and the questions asked by the experts would be taken into account by the Bulgarian Government when preparing its next periodic report.

41. Mr. SHERIFIS expressed his appreciation to the Bulgarian delegation for its exemplary dialogue with the members of the Committee. Supplementing the written report, the Bulgarian representatives had provided the experts with precise and complete new information on the implementation of the Convention since the date of the submission of the eleventh periodic report, had replied to the questions asked and criticisms made by the members of the Committee and had even contradicted a number of statements made in the report. He wished to place on record the strong impression made upon him by the candour, sincerity and depth of the dialogue between the members of the Committee and the Bulgarian delegation.

42. On a specific point, he asked whether the new electoral law guaranteed each ethnic group a parliamentary representation proportional to its share of the Bulgarian population.

43. Mr. ABOUL-NASR, having stated how impressed he was by the replies of the Bulgarian delegation, asked whether the members of the Turkish minority who, having left Bulgaria for Turkey, had not had the possibility of retaining Bulgarian citizenship, could recover their nationality when they returned to Bulgaria.

44. Mrs. SADIQ ALI said she had noted that Mr. Koulishev, when speaking of the forthcoming census of the population of Bulgaria, had not mentioned the Macedonians and asked whether they were recognized as constituting an ethnic minority in Bulgaria. With regard to those members of the Turkish minority who had fled Bulgaria, she would like to know how many of the 300,000 who had left the country had been able to return there and whether they had been rehabilitated. In that connection, it was possible that fear and a lack of confidence in the regime had combined with economic factors to force them to leave. Lastly, she asked what effect freedom of expression and association had had on the implementation of article 4 of the Convention.

45. Mr. YUTZIS said he was gratified that the representatives of Bulgaria had given detailed replies to the Committee's questions. He quite understood that the country was in a period of transition, during which progress had been made towards the implementation of the Convention. He had a personal comment to make on the change of names of Bulgarian citizens belonging to ethnic minorities. That measure seemed to have been adopted without consulting the persons concerned. From the cultural point of view, a name was linked to the identity of the person who bore it; that was even true of objects. He would like to draw the attention of the Bulgarian Government to the impact that such a measure could have on children in particular, whose sense of self-identification could be disturbed by no longer having the same name. In that connection, he cited as an illustration a situation that had occurred in a completely different context: in Argentina, children who had disappeared and had then been found had not wanted to return to their families, because

they identified more closely with the persons who had taken care of them in the meantime. He hoped that the Bulgarian Government would bear in mind the sociological and historical context of the measure in question.

46. Mr. KOULISHEV (Bulgaria) said that Mr. Sherifis, Mr. Aboul-Nasr, Mrs. Sadiq Ali and Mr. Yutzis had asked some very interesting questions. Replying first to Mr. Sherifis, he recalled that the electoral law he had mentioned had not yet been adopted; it was under discussion. He had not said that the law in question expressly provided for the candidacy of representatives of ethnic groups; it was rather a de facto situation that it would encourage: if a minority wanted to send a candidate to Parliament, it could vote for him but as an independent and not as a representative of that minority. That situation existed in other countries too. On the other hand, it was not planned to have a minimum number of deputies belonging to ethnic minorities, as was the case in Hungary.

47. He assured Mr. Aboul-Nasr that Bulgarian citizens of Turkish origin who had left their country could return and recover their nationality; as for their property, however, the recently adopted decree stipulated that restitution or compensation presumed Bulgarian nationality and the intention to settle in Bulgaria.

48. Replying to Mrs. Sadiq Ali, he said that the Macedonians had, in fact, been counted in earlier censuses: for example, they had numbered 8,000 in 1965. In the census that was to be carried out in December 1991, each person would be able to indicate his ethnic affiliation if he so desired. As for the factors that had caused the departure of citizens of Turkish origin, he had not stated that they were exclusively economic in nature; he had simply said that that aspect should be taken into account in many cases. The implementation of article 4 of the Convention was guaranteed by Bulgarian criminal law. It should also be stressed that article 44, paragraph 2, of the new Constitution banned organizations whose activities were prejudicial to the sovereignty, territorial integrity and unity of the nation or which incited to racial, national, ethnic or religious hatred; that was an important provision in terms of Bulgaria's compliance with its obligations under article 4.

49. Mr. Yutzis had rightly pointed out the consequences of changing a name. That factor was currently being taken into account in his country.

Mr. Shahi resumed the Chair.

50. The CHAIRMAN thanked the members of the Bulgarian delegation for the quality of their dialogue with the Committee. He hoped that the next report would give the Committee even greater satisfaction. He noted in particular the high level of the Bulgarian delegation, of which not only H.E. Mr. Dichev had been a member but also Mr. Koulishev, Secretary-General of the National Assembly of the Republic of Bulgaria.

Mr. Dichev, Mr. Koulishev, Mr. Dobrev, Mr. Sotirov and Mr. Kobarelov (Bulgaria) withdrew.

Mr. Vidas resumed the Chair.

51. Mr. de GOUTTES suggested a number of conclusions that the Committee might wish to adopt. Firstly, the Committee should express its satisfaction that Bulgaria was advancing along the road to democracy and the rule of law and, in particular, was making progress in the struggle against racial discrimination, after a period of totalitarianism. It should also welcome the fact that the report (CERD/C/197/Add.4) had been introduced by a delegation of very high quality. It should note the difference - indeed the gulf - that existed between the report and the oral presentation of the Bulgarian delegation. The eleventh report of Bulgaria had, in fact, been inadequate and had not even been in keeping with the Committee's guidelines, because it had restricted itself to a list of texts and contained little information on the context of their implementation, the composition of the population, legal recourse, etc., whereas the oral presentation had been sincere and had contributed some important new information. In particular, it had announced that Bulgaria was preparing to make the declaration under article 14 of the Convention and to withdraw the reservations it had entered. Much information had also been provided on changes in domestic law: the new Constitution, the amnesty act, the legislation on the restitution of land, provisions to monitor constitutionality, etc. It had also been announced that a census was to be carried out with the assistance of the United Nations which would collect information on the ethnic, religious, cultural and linguistic breakdown of the population.

52. The dialogue at the current session had been exceptional, but a number of points still remained to be clarified: the absence of information on trials for racism, the persistence of restrictions on access to public service, the situation of the Gypsies and the Macedonians (attention having been excessively focused on the Turks), the ban on the establishment of political parties on an ethnic or separatist basis, etc.

53. In its next report, the Bulgarian Government should provide information on the results of the planned census, on the compensation and redress for the victims of totalitarianism and on complaints and convictions for human rights violations. To ensure that the report was fully consistent with the Committee's guidelines, it would be useful if it could be prepared with the assistance of the advisory services, in accordance with the cooperation agreement concluded in June 1991 between the Bulgarian Government and the Centre for Human Rights.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Committee wished to adopt the conclusions suggested by Mr. de Gouttes.

It was so decided.

55. Mr. GARVALOV said he had some observations to make for the record. Although he had not participated in the discussion on the report of Bulgaria, he was particularly well placed to know what was happening in that country and what the situation was with regard to the implementation of the Convention. Bulgaria was currently in a transition period which, it was to be hoped, would enable it to lay the foundations of democracy. But that could not be done overnight; democracy had first to be built in the minds of people. Part of Bulgarian society was currently placing its trust entirely in the market

economy. That was indeed one of the premises of democracy, but there were some countries in which the market economy was flourishing that did not have genuine democracy. It must be recognized that Bulgaria had never really had experienced democracy since it had become an independent State in 1878. Part of the Bulgarian population unfortunately seemed to believe that democracy consisted in imposing views on the rest of the population. In particular, some demands concerning the use of mother tongues could hardly be realized in the existing circumstances; the rights of some might well encroach upon the rights of others (that was particularly true with regard to the use of the Turkish language).

56. In his own view, it was necessary first of all to ensure that all the basic human rights were guaranteed to everyone; that was a difficult but feasible task. On that basis, all the questions still pending would be capable of resolution, including that of racial discrimination.

57. Mr. RESHETOV said he wished to stress that Bulgaria had voted for democracy and that it was implementing a vast programme to achieve that goal. The programme was a complex one and its implementation would inevitably encounter certain delays. It was important to bear in mind the transitional situation in which the country found itself; on the other hand, the Committee must apply the same rules to all States parties. The Committee knew, however, that the situations in various countries did not correspond to their portrayal in the mass media, which tended to see everything in black and white terms. The Committee's task was to ensure that the provisions of the Convention were implemented throughout the world, and in carrying out that task, it must use the methods and means given it by the Convention.

58. Mr. de Gouttes had asked for information on the punishment of human rights violations perpetrated under the previous regime. In his own view, several levels of responsibility must be distinguished: if serious violations were involved, the criminal code existing at the time was applicable; if the violations had the character of, for example, genocide, international law was applicable; general provisions had also been proposed to punish Governments that were guilty as such of human rights violations. However, to impose punishment on parts of the population for human rights violations risked giving rise to retaliatory policies. He reiterated that the standards the Committee applied must be the same for all countries.

59. Mr. YUTZIS said that the Committee should specify how the individual remarks of its members should be incorporated in the conclusions proposed by Mr. de Gouttes, which had been adopted. There was a danger of having several evaluations of the report.

60. Mr. ABOUL-NASR said that the Committee was not required to seek uniform conclusions, inasmuch as its members belonged to different legal systems and cultures.

61. The CHAIRMAN pointed out that Mr. Garvalov had simply asked that his observations be reflected in the summary record, after Mr. de Gouttes' proposals had been adopted by the Committee. That certainly applied to Mr. Reshetov too.

62. Mr. LAMPTEY said that the question as to where the statements made by the members of the Committee, in particular by Mr. Garvalov, should be placed ought to be clarified at the next meeting.

63. The CHAIRMAN said that the question would be taken up again at the next meeting.

The meeting rose at 1 p.m.

CERD/C/SR.920
13 August 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 920th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 8 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Iraq (continued)

Organization of work (continued)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (*continued*)

Ninth and tenth periodic reports of Iraq (CERD/C/159/Add.2 and CERD/C/185/Add.2) (*continued*)*

At the invitation of the Chairman, Mr. Al-Douri, Mr. Al-Kadhi and Mr. Mohammed (Iraq) took places at the Committee table.

1. *Mr. AL-DOURI* (Iraq), responding to questions raised by members of the Committee at the previous meeting, pointed out that the two reports under consideration had been transmitted to the United Nations before the recent events in the Gulf. Questions relating to a later period should, therefore, properly be considered in connection with the eleventh report. He would none the less try to answer members' questions.

2. He would first give a general outline of the background to the situation of the Shiites and of the Kurds. With regard to the Shiites, he explained that they considered their imams should be drawn from the descendants of Ali ibn Abi Talib, the cousin of the Prophet, in contrast to the Sunnis, who believed in elected imams in accordance with the views of Ali ibn Abi Talib's three predecessors. Subsequently, Ali's son, Hussein, had sought support from both the Sunnis and the Shiites in his bid to establish his family's dynasty, but had failed to get it from the Sunnis. In the ensuing battle Hussein had been killed and the anniversary of that event raised difficulties between the two groups. But it was in no sense a racial conflict, because the two groups otherwise had a common religion, history and culture. The recent events in southern Iraq had been an aberration. Following the withdrawal of the Iraqi army, the economic blockade and food shortages throughout Iraq, some countries - particularly Iran, but also some members of the Alliance - had sought to dominate southern Iraq, encouraging the local Shiites to set up interim governments in various towns of the region. In those circumstances the Iraqi army had clearly had to regain control of the region and the process had led to loss of life and the destruction of such hospitals, factories, etc. as had survived the bombardment during the Gulf war. It was a complex situation, which might have affected some people negatively. But there was no conflict or persecution based simply on a person's sect. Whether a person was Shiite or Sunni was not germane in Iraqi public life and indeed was often not known. He therefore found it strange to hear the question discussed at the international level as a racial problem.

3. As far as the Kurds were concerned, he did not dispute that there was a Kurdish problem, which was due to the artificial formation of Iraq after the First World War. But he denied that the Kurds had ever been treated as a separate people in a negative, discriminatory sense. Many Kurds were and had been prominent in public life, although he did not know the percentage, since

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* Resumed from the 917th meeting,

he had always regarded them simply as fellow Iraqis. In the Autonomous Region of Kurdistan, however, all public offices were held by Kurds. He conceded that there had at times been Kurdish opposition to the Government, particularly when there had been rifts between Iraq and other countries, and those countries had tried to exploit any existing dissatisfaction among the Kurds as a bargaining chip. Such a situation had inevitably had a negative effect on human rights, particularly during the Gulf war. During the Iraq-Iran war, hundreds of thousands of Kurds had fled to Iran and Turkey with the intention of bringing pressure to bear on Iraq. History had recently been repeated on a larger scale. Three big cities - Sulaimaniya, Arbil and Dohuk - had been occupied, civil servants murdered, hospitals and schools looted, as if a foreign country was involved. It had therefore been necessary for the Iraqi army to reoccupy those cities and the rebels had fled to Iran or Turkey, most of them, in his view, because of a propaganda campaign alleging that those who remained would be victims of massacres. The so-called Kurdish problem originated with some elements of the Kurdish leadership, because most Kurds were peace loving.

4. Turning to specific questions, he said that with regard to the composition of the Iraqi population, there were three main ethnic groups - Arabs, Kurds and Turkomans. Some members of the population were Shia or Sunni Muslims, others Catholic, Protestant or Eastern Orthodox Christians, while there were also adherents of the Yazidi faith in the north. With regard to the number of Kurds who had fled during the Iran and Gulf wars, he could only say that the number was very large, but many had also returned, since the borders of the country were too long to be properly controlled. He drew the Committee's attention to the report of the United Nations High Commissioner for Refugees, according to which 477,611 Kurds had returned to Iraq, mostly to their own regions, following the memorandum of understanding which Iraq had signed with the United Nations in April 1991. Both the memorandum and internal Iraqi resolutions and decrees were intended to ensure that Kurds could return home safely. Medical assistance and food had been provided.

5. The situation in southern Iraq was returning to normal, and there were no abuses of human rights: force had been used in order to restore public order, but numerous amnesties had been declared, and any repression was directed solely against persons guilty of murder or rape. Some of the population of southern Iraq was still in Iranian territory, but it could be assumed that they would return as soon as they were permitted to do so by the Iranian authorities.

6. In general, conditions in Iraq had stabilized, but serious problems continued to arise because of sanctions, which effectively prevented the country from utilizing its wealth to feed its people. His Government would make every effort to ensure that food supplies reached those in need, particularly in the south. Ration cards had been issued, but the international assistance provided was insufficient for a population of 18 million, and destruction of the infrastructure had led to a shortfall in agricultural production.

7. In reply to a question raised by Mr. Wolfrum, he said that the emergency laws had long since been suspended.

8. On the relationship between the Legislative Council of the Autonomous Region of Kurdistan and the National Assembly, he said that the former body, which handled Kurdish affairs, was fully independent, and that its responsibilities were entrusted to 50 elected members. There had been 174 candidates in the elections for those posts, and more than 780,000 people had participated in the voting. There were 250 elected representatives from all regions in the National Assembly, but he was unable to provide details of their ethnic or religious affiliation.

9. During the Iran-Iraq war the border region had effectively been a battlefield, which the Iraqi authorities had subsequently tried to establish as a buffer zone. It was to be hoped that, with the cessation of hostilities in the Gulf war and the new status of the Autonomous Region of Kurdistan, the area could be developed.

10. Since the founding of the Iraqi State, the Kurdish language had been officially recognized as an official language of the State. It was widely used and legally recognized. However, although newspapers were published in Kurdish, the language was not standardized, and Kurdish students themselves sometimes opted for instruction in Arabic. In that connection, it should be pointed out that other minorities, including Syrians, Turkomans and Assyrians, also enjoyed access to publications in their own languages.

11. On the question of relations between his delegation and the Committee on Civil and Political Rights, discussions on four articles of the Convention on Civil and Political Rights had been held and would resume in September or October 1991; relations could thus not be regarded as unfruitful. His delegation would also maintain a continuing dialogue with the Committee on the Elimination of Racial Discrimination.

12. Reference had been made to repression directed against opposition parties. It should be pointed out that some of those parties had been engaged in armed opposition to the Iraqi Government with the encouragement of neighbouring States. Opposition was led by the Da'wa party, a well-known extremist religious party whose headquarters was currently in Iran and which sought to impose fundamentalist religious tendencies similar to those prevailing in Iran. However, negotiations were now under way with representatives of the opposition parties, and his delegation looked forward to the establishment of a multi-party system.

13. Referring to the concerns expressed by Mr. Aboul-Nasr, he said that specific measures had been taken in Iraq in the aftermath of the Gulf war to repeal laws originally enacted in response to exceptional circumstances. The revolutionary courts had been abolished in May 1991; restrictions on foreign correspondents had been lifted, and no one was prevented from travelling abroad. A Council of Ministers independent of the President had been established, and a new press law was about to be introduced. A law providing that all Iraqis could belong to a political party of their choice had already been promulgated.

14. In connection with legal safeguards, one important measure provided that no one could be arrested without observance of proper legal procedures, which included the mandatory presence of a mukhtar, or elder. A Court of Administratve Justice had been established to deal with citizens' complaints

against the State or the Administration. If so requested, his delegation could provide details of the relevant legal and administrative measures recently adopted.

15. On the Kurdish question, he wished to point out that, while there were undoubtedly practical difficulties, there was no "Kurdish problem" as such, and that the Kurdish populations in Turkey and the USSR, for example, did not enjoy full autonomy. The "problem" was in any case exacerbated by the interference of neighbouring States attempting to destabilize the situation in Iraq in order to diminish the country's enormous potential for development.

16. Referring in conclusion to a question raised by Mr. Garvalov, he said he did not have any details regarding the situation of Jews in Iraq and would welcome any information Mr. Garvalov himself might be able to provide.

17. Mr. WOLFRUM said that, while it could be acknowledged that the extremely difficult political and economic situation in Iraq must entail some hardship and curtailment of human rights, the Iraqi representative had been unable to allay the misgivings voiced by members of the Committee in that regard. In particular, he had failed to explain the reasons for the current repression of the Shiites. It was clear that force had been used on a massive scale in southern Iraq against the civilian population, and that the Iraqi authorities had abrogated their duty to guarantee its safety.

18. He was fully aware that the Kurdish question was not restricted to Iraq, but the Committee was discussing the report of Iraq, and not that of any other country. The Iraqi delegation had not addressed the disappearances in 1988 or the bombings of fleeing civilians, including women and children. The explanation given that the Kurdish issue was being used to destabilize Iraq was no justification for the operations of the Iraqi armed forces, which had not been provoked from the outside and for which the Government of Iraq bore responsibility.

19. As long as Iraq had regarded Kuwait as its nineteenth province and had exercised control over that country, it had been responsible for protecting the life, security and property of the Kuwaiti population. Yet the Iraqi delegation had failed to deal with the issue. The Committee had not raised any political questions; as the monitoring body of the Convention, its mandate was to ensure that human rights were protected, and it therefore sought an assurance that the human rights of Kurds and other groups in Iraq were being safeguarded, not only in law but in practice. Information on the Iraqi legal system was not enough, and the next report should focus on the actual implementation of Iraqi measures to guarantee the human rights of its citizens.

20. Mr. de GOUTTES said it was significant that Iraq had sent a delegation to introduce its reports.

21. The Committee agreed on three points: the situation of the population of Iraq was critical as a result of the Gulf war; the Committee could not help but address the suffering involved; and the problem of the Kurds was also posed in other countries.

22. The Iraqi delegation had provided detailed information on the causes of the division between the Shiites and the Sunnis and on the urgency of the Kurdish problem and its international character, as well as rudimentary information on the ethnic composition of the Iraqi population and the structure of the National Assembly. But that could not be regarded as an adequate response to the question whether it was complying with the Convention.

23. Speaking recently in the Human Rights Committee, the Iraqi delegation had countered allegations of human rights violations with references to the destruction, chaos and revolts that had followed the Gulf war and had maintained that those violations fell within the competence not of the Human Rights Committee, but of the Security Council. Speaking in the present Committee, the Iraqi delegation had asserted that the Shiite and Kurdish issues had not involved racial discrimination, but were political problems that had been exacerbated by the Iran/Iraq war and the Gulf war, that Iraq was being treated as a scapegoat and that other countries should be equally condemned. Although the approach was different, the aim was the same: to avoid responding to allegations of human rights violations or answering the questions put by members of the Committee. That attitude was all the more unacceptable, because the Committe's goal was to combat racial and ethnic discrimination, and the discrimination of which the Kurds had been the victims clearly fell within its sphere of competence. In that connection, he drew attention to article 5, paragraphs (b) and (d), of the Convention. In his view, the Committee should state clearly that it was not satisfied with the replies of Iraq, which should be asked to provide a complete written report in accordance with its obligations under article 9 of the Convention. The Committee might then also consider raising the question in the Human Rights Committee later in the year with a view to obtaining fuller information on a number of questions that had been raised, in particular, with regard to the persecution of Kurds and Shiites, the plight of the Kurdish population, and the disappearances of members of that ethnic group. It was essential for the present discussion to be followed up.

24. Mr. ABOUL-NASR said that the problem of the Kurds clearly fell within the competence of the Committee, but the question of the Shiites, which was a religious issue, did not. It was equally clear that serious human rights violations had taken place in Iraq before and during the armed conflict there. But it should also be noted that efforts had been made to improve the situation, for example, through the negotiations in progress between the Kurds and the Iraqi Government and the new legislation that would soon come into force. He looked forward to details in the next Iraqi report on questions not yet answered and on the steps being taken by Iraq to improve the situation and implement all human rights instruments.

25. Mr. GARVALOV acknowledged the significance of the presence of an Iraqi delegation despite the difficulties Iraq was currently experiencing. But there was no one to blame for the plight of the Iraqi people except the Government itself.

26. He was still under the impression that there was racial discrimination with regard to the small Jewish minority. He would also like to know whether the refusal to allow foreigners living and working in Iraq to leave the country during the Gulf war had been necessary for security reasons or whether it had been a discriminatory measure.

27. It was the established practice in the Committee for country reports to be updated by representatives of the country concerned. The Iraqi delegation had, however, failed to do so.

28. He was fully aware of the political aspect of the Kurdish problem and of the presence of Kurds in other countries. In his view, it would be more appropriate to speak of a Kurdish nation than of a Kurdish minority. But the problem was not purely political; it also had implications for human rights and, in particular, racial discrimination, and that was of concern to the Committee. He sympathized with the Iraqi statement that the Kurds had been manipulated by foreign Powers, and not only in their best interest, but everyone was aware that that was not the sole cause of the problem.

29. It should be recalled that the Charter of the United Nations explicitly provided that resolutions adopted by the Security Council - and that included Security Council resolution 688 (1991) - were mandatory, whereas those adopted by the General Assembly had the character of recommendations.

30. Mr. FERRERO COSTA said that the Committee was clearly dissatisfied with the answers of the Iraqi delegation. There had been no response to its questions concerning the Iraqi Government's treatment of the Kuwaiti population during the occupation of Kuwait. Iraq was responsible for its behaviour there, and the Committee was certainly competent to deal with the question.

31. The Committee was likewise competent to deal with the Kurdish problem, because racial discrimination was indisputably involved. The Shiite question was somewhat different, and that fact was reflected in the difference of opinion in the Committee.

32. Closer monitoring of the situation of the Kurds in Iraq was needed. It was not sufficient to wait until the next periodic report; measures should be taken forthwith to obtain fuller information on the current situation of the Kurdish population and in that context he agreed with the comments made by Mr. de Gouttes. He proposed that the Government of Iraq, in conformity with article 9, paragraph 1, of the Convention, should be requested to report to the Committee at its next session on the situation of the Kurdish population in Iraq and on the measures it was taking to comply with the provisions of the Convention.

33. Mr. YUTZIS said that there were two ways of sabotaging any discussion of the human rights situation in a given country. One was to claim that the whole matter was political, while the other was to maintain that no political issues were involved. In either case, the goal was to evade a serious discussion of the issue. With regard to the situation of the Kurdish population in Iraq, to explain the suffering of that population by reference to political factors was to skirt the issue and ignore the plight of women and children. Iraq was responsible for the situation of the Kurdish population,

for protecting civilians and for guaranteeing their human rights, and notwithstanding any political factors that might be involved, the analysis of the situation provided by the Iraqi delegation was inadequate.

34. He would approve a decision by the Committee to arrange for a follow up of its consideration of racial discrimination in Iraq. In view of the gravity of the question, it must be examined again without further delay.

35. Mr. ABOUL-NASR said that although he was critical of Iraq's record in the war and considered the Iraqi Government responsible for starting the conflict, he could not condone the effort to treat Iraq differently from other States or to pass judgement on it. The Committee had abandoned its earlier unfruitful practice of referring to reports as "satisfactory" or "unsatisfactory", and it was unacceptable to revive that practice solely in the case of Iraq. He also disagreed on the need for Iraq to present an urgent report. Its next report was due in 1991, and the Committee could examine it at its next session.

36. Mr. RESHETOV said that although Iraq had shown a readiness to engage in a dialogue, its reports and the oral presentation had not been satisfactory. Despite the questions raised by the Committee, no information had been forthcoming on the situation of the Kurds. References to the Kurdish problem in other countries did not constitute the right approach to a situation affecting part of Iraq's own population.

37. In his opinion the Shiite question fell within the competence of the Committee, which often enough had been called upon in the past to consider situations in which it had been difficult to say whether ethnic or religious questions were involved, for example the whole subject of discrimination against Jews.

38. The Iraqi delegation had given some information on changes in legislation which it believed indicated an improvement of the human rights situation in Iraq. He therefore took the view that the Committee should continue its dialogue with the Government of Iraq, and in that context, he agreed with Mr. Aboul-Nasr that it should not pass judgement on the human rights situation in Iraq, because it did not do so in the case of other countries. He saw no point in requesting Iraq to supply further information without delay, as its next periodic report was due shortly. The Government of Iraq might, however, provide additional information in that report in order to clarify certain points.

39. The CHAIRMAN said that a way of reconciling the diverging views in the Committee on the proposal to request Iraq to submit additional information under article 9, paragraph 1, of the Convention, while avoiding recourse to any special procedure, would be to ask the Iraqi Government to submit its eleventh report, which was already overdue, in time for it to be considered by the Committee at its forty-first session, and to include in it the Government's response to the comments and questions raised by the Committee at the current session.

40. Speaking in his personal capacity, he observed that, although Iraq was responsible for the invasion of Kuwait and for the reaction it had invited from the world community, the suffering of the people of Iraq was not entirely due to that act of aggression, and the punishment inflicted had been disproportionate to the act committed.

41. Mr. de GOUTTES said that there remained the question of coordination with the Human Rights Committee, to which Iraq was due to submit a report at its forthcoming session. He trusted that the Committee on the Elimination of Racial Discrimination would be informed of the debate on that report, including Iraq's replies, before it met in the spring of 1992.

42. The CHAIRMAN agreed that the Committee might take into account Iraq's reports and replies to the Human Rights Committee when it considered that country's eleventh periodic report.

43. Mr. ABOUL-NASR said he had no objection to that suggestion, provided it applied to all States parties to the Convention.

44. Mr. AL-DOURI (Iraq) thanked the Chairman and members of the Committee for their cooperation and for their comments and questions, which would be conducive to a common understanding of the issues raised. Those questions must, however, be restricted to the Committee's mandate. The Iraqi Government would cooperate fully with the Committee in providing clarification and giving a comprehensive picture of the situation.

45. In speaking about other countries with a Kurdish population, he had on no account meant to justify events in Iraq, but had merely been answering a question about the areas in which Kurds lived and why there were problems in Iraq. What had happened in the north of Iraq had nothing to do with racial discrimination or with the Kurds as members of a specific ethnic group. Indeed, they enjoyed the same rights as other Iraqi citizens. The events in question had occurred for reasons totally beyond the control of Iraq, which faced huge, complex problems related primarily to security.

46. The CHAIRMAN said that it was preferable not to re-open discussion on whether the Kurds constituted an ethnic group and requested the representatives of Iraq to bear in mind the Committee's comments in drafting the eleventh report.

Mr. Al-Douri, Mr. Al-Kadhi and Mr. Mohammed (Iraq) withdrew.

ORGANIZATION OF WORK (continued)

47. The CHAIRMAN, reporting on his meeting with the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in view of the forthcoming joint meeting between the Sub-Commission and the Committee on the Elimination of Racial Discrimination, said that, for reasons of time, there would be just one, 3-hour joint meeting and that it would be an open meeting.

48. The suggested agenda would cover an exchange of information and views on the respective mandate and methods of work of each body and their members' assessment and interpretation of their work. At his own suggestion, the meeting would also discuss new challenges and problems raised by massive and systematic human rights violations. Thirdly, it would discuss the question of conflicting rights, on which both bodies would be presenting a paper.

49. He invited comments on questions such as the possibility of a time-limit on statements, statements by members on behalf of their regional group and other organizational matters.

50. After an exchange of views in which Mr. GARVALOV, Mr. BANTON, Mr. ABOUL-NASR, Mr. YUTZIS, Mr. LAMPTEY, Mr. FERRERO COSTA, Mr. VIDAS, Mr. de GOUTTES and The CHAIRMAN took part, The CHAIRMAN said he took it that the Committee agreed that the meeting's agenda would cover the topics to which he had referred in order to focus the debate, with due flexibility to allow for an open discussion. Statements should be restricted to 10 minutes. The meeting would begin with a brief introduction by the two Chairmen, including the presentation of the first topic, which covered the exchange of information and coordination between the two bodies. Mr. Wolfrum, Mr. Ferrero Costa and Mr. Yutzis would speak on the topics they had been designated to prepare - conflicting rights, coordination and new challenges, respectively - without prejudice to a free exchange of views.

It was so agreed.

51. Mr. TIKHONOV (Secretary of the Committee) read out a note verbale from the Permanent Mission of Zaire, requesting that consideration of its second periodic report should be postponed, since, for technical reasons, the Government would be unable to send a representative to present the report as scheduled.

52. Mr. BANTON, speaking as rapporteur entrusted with the preliminary examination of the report of Zaire, suggested that, since no satisfactory reason had been given for the Government's failure to send a representative and no alternative date had been proposed, the Committee should proceed with its consideration of the report in the absence of a government representative, as it would be doing with the reports of Togo and Guinea.

53. Mr. GARVALOV said that the failure to send government representatives was a disturbing trend, and he agreed with Mr. Banton's proposal.

54. The CHAIRMAN said he took it that the Committee wished to proceed with its consideration of the report of Zaire in the absence of a government representative.

It was so agreed.

The meeting rose at 6 p.m.

CERD/C/SR.921
25 October 1991

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Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 921st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Iraq (continued)

Reconsideration of reports of States parties that are overdue

Organization of work (concluded)

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Iraq (continued)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Ninth and tenth periodic reports of Iraq (CERD/C/159/Add.2, CERD/C/185/Add.2) (continued)

1. Mr. WOLFRUM read out the following text of the concluding observations he was proposing to the Committee upon completion of its consideration of the reports of Iraq:

> "The Committee appreciates that the Government of Iraq has undertaken to enter into a dialogue with the Committee and hopes that such positive attitude will prevail. The Committee acknowledges that Iraq faces economic and political problems as the consequence of the recent armed conflict and that first steps have been initiated by it with a view to improving the human rights situation in general and, in particular, the situation of ethnic groups in Iraq, including that of the Kurds. However, the Committee has not yet received the information which would enable it to assess the human rights situation in Iraq. The failure to address the treatment of ethnic groups in Iraq, particularly the treatment of the citizens of Kuwait, subsequent to 2 August 1990 is, since Iraq is under an obligation to respect and to ensure to all individuals under its jurisdiction or control the rights recognized in the Convention, a matter of grave concern to the Committee. The Committee calls upon the Government of Iraq to include the requested information in its eleventh report, due in 1991, and to submit the eleventh report in sufficient time for the Committee to be able to discuss it at its next session."

2. Mr. RESHETOV said that he endorsed the text proposed by Mr. Wolfrum, but thought that, in the second sentence, it was not enough to refer to "the recent armed conflict"; the very sad events which had occurred after the conflict and which had had grave consequences for the population of Iraq should also be taken into account.

3. Mr. WOLFRUM proposed that, to meet the point raised by Mr. Reshetov, the words "the recent armed conflict" in the second sentence should be replaced by the words "the recent events". In addition, the words "and, in particular," towards the end of the same sentence should be replaced by the words "and especially".

4. The CHAIRMAN, noting that there were no other comments, said he would take it that the amendments proposed by Mr. Wolfrum were adopted by the Committee.

It was so decided.

5. The CHAIRMAN drew the Committee's attention to the question of States parties whose reports had been overdue for a number of years and which had not sent representatives to the Committee. Special Rapporteurs had been appointed to deal with that situation.

Reconsideration of reports of States parties that are overdue

Second and third periodic reports of Sierra Leone (CERD/C/R.30/Add.43 and 46, CERD/C/R.70/Add.22)

6. Mr. LAMPTEY, Country Rapporteur, recalled that the Committee's consideration of the second periodic report of Sierra Leone (CERD/C/R.30/Add.43) at its 153rd, 159th and 161st meetings in August 1973 had revealed some shortcomings. The representative of the reporting State had requested that further consideration should be postponed until the Committee's ninth session. At its 204th and 215th meetings on 14 and 22 August 1974, the Committee had had before it an addendum to the second periodic report (CERD/C/R.30/Add.46), as well as a third periodic report (CERD/C/R.70/Add.22). Those reports taken together had, however, been considered deficient by the Committee. There had also been a divergence of views on a provision of the Sierra Leone Constitution which some members had considered incompatible with article 1, paragraph 3, of the Convention. At the end of its deliberations, the Committee had approved a communication to the Government of Sierra Leone requesting various clarifications and further information and stressing the need to follow the existing reporting guidelines. That communication had been transmitted by the Secretary-General to the Government of Sierra Leone in 1974. The State party had not submitted the required reports and had thus failed for more than 15 years to fulfil its obligations under article 9 of the Convention.

7. At the Committee's 159th meeting on 15 August 1973, the representative of the State party had questioned the Committee's objectivity on the subject of his country's report and had objected to some of the comments made by members. It would be unjustified if that episode had motivated Sierra Leone's failure to submit reports since that date. The members of the Committee had made clear at the time that no bias against Sierra Leone was implied, their aim being simply to understand the situation in the State party and to help it fulfil its obligations.

8. Since 1974, many changes had taken place in Sierra Leone and, even now, the country was in the process of establishing a new constitutional framework. Reopening the discussion on the previous reports would not serve any useful purpose. What needed to be done was to address another communication to the State party emphasizing that it must fulfil its reporting obligations and stressing the value of the re-establishment of a dialogue between the Committee and the State party. The communication should be accompanied by the text of the new reporting guidelines and the summary record of the present meeting, as well as of previous meetings at which reports of Sierra Leone had been considered, and should also express the Committee's interest in receiving information concerning the constitutional and other developments now taking place in the State party. The State party should be informed that any new report would be regarded as incorporating all overdue reports and gaining in quality if it were accompanied by constitutional and related legal and administrative texts.

9. Mr. ABOUL-NASR said that he agreed with the procedure proposed by Mr. Lamptey. He wondered whether Sierra Leone was not, in a sense,

"boycotting" the Committee. It might also be useful to know where that country stood with regard to the payment of its contributions towards the financing of the Committee's expenses.

10. The CHAIRMAN recalled that a table showing the assessments outstanding was reproduced in annex IV of the Committee's latest report to the General Assembly (A/44/18). The table showed that, in 1989, the amounts owed by Sierra Leone had totalled $US 7,311.

11. Mr. SHERIFIS said that he also endorsed Mr. Lamptey's proposals. In his view, the Committee should check the fulfilment of financial obligations by States parties when considering all reports.

12. The CHAIRMAN recalled that, in accordance with a decision adopted by the Committee at its previous session, a letter had been sent to all countries whose reports were long overdue. Sierra Leone had not replied; only one answer from Côte d'Ivoire, had been received. Guinea, Togo and Zaire had requested a postponement.

13. Mr. WOLFRUM said that he also supported Mr. Lamptey's proposals. He asked for information about the new Constitution, which, so far as he knew, should have been voted upon in June.

14. Mr. LAMPTEY confirmed that Parliament was meeting to consider the text of the Constitution, which should be adopted very shortly.

15. The CHAIRMAN, noting that there were no other comments, said he took it that the Committee decided to address a communication to Sierra Leone along the lines suggested by Mr. Lamptey.

It was so decided.

Second and third periodic reports of Swaziland (CERD/C/R.30/Add.40, CERD/C/R.70/Add.18)

16. Mr. VIDAS, Country Rapporteur, said that the Swazi Government had not responded to a letter from the Centre or to his own efforts to obtain information concerning the situation in the country. He was therefore reporting on the basis of documentation dating back to the Committee's tenth session, held in 1974, when the third periodic report of Swaziland had been considered. The Committee had concluded at the time that the report of Swaziland contained useful information on the country's general policy in combating racial discrimination and that the Government had taken the Committee's recommendations seriously; the Committee had, however, not received the additional information it had requested concerning the revision of the Constitution, the retention of economic power in the hands of a minority and the persistence of racial discrimination in that respect.

17. Seventeen years after the submission of the third periodic report of Swaziland, it was interesting to note that the Government of that country had drawn attention to the possible impact of its example on the elimination of racism in South Africa. The report had stated that Swaziland was a country

of 17,500 km^2 and 700,000 inhabitants, of whom 90 per cent were Swazis, 8 per cent Zulus and Tongas, and 2 per cent Europeans. Sixty per cent of the population was Christian and the remaining 40 per cent belonged to traditional African religions.

18. Available information from various sources confirmed the continuation of political instability in the country, but there was no way of knowing whether the policies being implemented were in conformity with the Convention. He had learned from United Nations Headquarters in New York that Swaziland had contributed $760 to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

19. In its report to the General Assembly, the Committee should reiterate its request for information from Swaziland so that it might determine whether that State was complying with its obligations under the Convention. The Centre for Human Rights should address a request along those lines directly to the Government of Swaziland.

20. Mr. WOLFRUM said he endorsed that proposal, but noted that the communication sent to the State party should be accompanied by the summary record of the current discussion. According to information at his disposal, Swaziland's Nationality Act provided that nationality was conferred only upon children of Swazi fathers, the mother not being taken into account. Such legislation had the effect of increasing the number of stateless persons in the country.

21. Mr. de GOUTTES said that the Committee should request information, in particular, on two questions of current interest, first, discrimination between ethnic groups to the advantage of Swazis and, secondly, arrests which had, according to certain sources, been carried out in May or June 1991 among students and trade unionists, as well as among supporters of the banned Popular Democratic Movement. If the information was correct, it meant that there were prisoners of opinion in Swaziland.

22. Mr. FERRERO COSTA said he also thought that the summary record of the discussion should be attached to the letter addressed to the Government of Swaziland. In addition, the Government should be requested, in its next report, to comply with the Committee's guidelines by providing information on the ethnic composition of the population and the way in which the Convention was being implemented.

23. Mrs. SADIQ ALI said that the recommendation by Mr. Vidas was excellent. She pointed out that Swaziland also had a Shangan minority and recalled that the democratic system had been abolished in March 1977, with a new Constitution reportedly entering into force in 1978. If that Constitution was still valid, the relevant parts should be communicated to the Committee.

24. Mr. LAMPTEY said that, in his view, the questions raised in connection with Swaziland's Nationality Act and with recent arrests in that country did not come within the scope of the Committee's mandate, but were rather, within that of the Human Rights Committee.

25. Mr. ABOUL-NASR said that sending a letter accompanied by a summary record was not enough; efforts had to be made to establish a dialogue with a country

which had, in violation of article 9 of the Convention, failed for so long to send a representative or submit reports. The Committee's letter should not challenge the State party, but should clearly remind it of its obligations. It should point out that the previous reports of Swaziland had not been in conformity with the Committee's guidelines and explain what had to be done to remedy that situation. The Committee should, moreover, draw the attention of the General Assembly to the case of States which failed to submit their reports and were behind in the payment of their contributions.

26. Mr. SONG Shuhua said that he agreed with Mr. Vidas' comments concerning Swaziland. With regard to the Constitution, he thought it would be useful to obtain the text of any provisions relating to the ethnic problem. Lastly, he agreed with Mr. Lamptey that it was inappropriate for the members of the Committee to judge the political situation in countries whose reports they were considering.

27. The CHAIRMAN said that the Committee was not exceeding its powers by requesting information on the composition of a country's population and the extent to which various ethnic groups were represented in political institutions.

28. Mr. SHERIFIS said that he endorsed the proposal to send a letter to the Swazi Government and thought that the Centre should send similar letters to all countries which did not submit reports.

29. Mr. VIDAS said that, in his view, the report of the Committee to the General Assembly should reproduce its concluding observations on Swaziland's implementation of the Convention and reiterate its questions to the Swazi Government, in particular concerning the constitutional review and the retention of economic power in the hands of a minority, so that the Swazi representative at the General Assembly might take cognizance of those comments. The Centre for Human Rights, in its turn, could perhaps send a letter to the Swazi Government informing it of all the questions raised by the Committee.

30. The CHAIRMAN explained that the Committee would formulate observation concerning all States whose situation had been considered in the absence of any representative.

31. Mr. YUTZIS pointed out that certain countries found it difficult to prepare and submit reports because they lacked the necessary qualified staff. It might therefore be useful to remind them that the United Nations had advisory services which could help them draft their reports.

32. The CHAIRMAN proposed that the letter sent to the Swazi Government should state that the Centre for Human Rights would be willing to provide it with technical assistance in the preparation of its reports.

33. Mr. GARVALOV suggested that it might help solve the problem of cooperation by States parties if a representative of the Committee attended the regular session of the General Assembly, the first two and a half weeks of which were devoted to a general debate. That representative could thus meet the delegations of States which had failed to submit reports and transmit the

Committee's observations and requests directly to them. He hoped that the members of the Committee would consider his proposal with a view to arriving at a solution, if possible before the end of the current session.

34. Mr. ABOUL-NASR said that, when he had made his earlier comments, he had been unaware that Swaziland had no permanent mission in Geneva. He did not think that Swaziland should bear all of the blame and recalled that the Committee was also partly responsible in that it was not holding its sessions in New York, as provided in the Convention. Instead of sending a representative to the regular session of the General Assembly, the Committee should meet in New York at least once a year.

35. Mr. WOLFRUM said that he agreed with Mr. Aboul-Nasr's comments, but noted that the Committee had already considered the possibility of holding a session in Africa, two cities having been mentioned in that connection.

36. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) recalled that, during the United Nations financial crisis, the States parties to the Convention had agreed that the Committee should meet only in Geneva. The Committee might eventually revert to holding its March session in New York and the August session in Geneva if the financial situation permitted and if the States parties so decided.

37. She understood that a proposal had been made that the secretariat should address a letter to the States whose reports had been considered in the absence of their representatives. The secretariat saw no objection to informing States that their report had been considered and transmitting to them the relevant summary records. However, if the Committee wished to address recommendations to the countries in question, it would be for the Chairman to send a letter to the Ministers for Foreign Affairs of the countries concerned, since it was he who had originally requested them to prepare a report and to send representatives.

38. Mr. LAMPTEY said that he agreed with Mr. Aboul-Nasr's proposal and thought that the Committee ought to take a decision at the present session. He therefore proposed that a recommendation should be formulated to the effect that the Committee should hold its March session in New York. He also agreed that it was not for the secretariat, but, rather, for the Chairman to send States which failed to fulfil their reporting obligations a letter informing them of the Committee's observations and requests.

39. Mr. VIDAS said that he agreed with Mr. Lamptey.

40. Mr. de GOUTTES said he agreed with Mr. Aboul-Nasr that Swaziland was less to blame because it did not have a permanent representative in Geneva. That was, however, also true of other States. That mitigating circumstance should therefore be taken into consideration and mentioned in the Committee's concluding observations on the consideration of the reports of all States whose situation was the same as Swaziland's.

41. Mr. FERRERO COSTA said that he associated himself with the comments by Mr. de Gouttes and also endorsed the proposals to recommend to States parties that the Committee's March session should be held in New York and to send a letter signed by the Chairman to States which failed to fulfil their

obligation to submit reports. If the Centre for Human Rights had no objection, the letter should also indicate that States could ask the Centre for assistance in drafting their reports.

42. Mr. SHERIFIS said that, before taking up the question of the place where its sessions would be held, the Committee should conclude the consideration of the report of Swaziland. He therefore proposed that the question of the Committee's sessions should be reverted to at a later stage under the appropriate agenda item.

43. The CHAIRMAN said that, if there was no objection, a decision concerning the place of the Committee's sessions would be taken later under the appropriate agenda item.

It was so decided.

44. The CHAIRMAN said that he would *ex officio* address a letter to Swaziland and the other States which had not submitted reports, informing of the Committee's observations and conclusions. In reply to the comment made by Mr. de Gouttes, he said that Sierra Leone, Togo and Guinea had no permanent representative in Geneva.

45. The proposal concerning technical assistance by the Centre for Human Rights would have to remain in abeyance pending a reply from the Centre concerning financial implications.

46. Lastly, on the subject of arrears, he reported that contributions had recently been received from Fiji and the Bahamas.

Initial report of Guinea (CERD/C/15/Add.1)

47. Mr. LAMPTEY, Country Rapporteur, said he regretted that Guinea had not continued the dialogue it had started with the Committee when it had submitted its initial report in 1978 and that no further report had been submitted since that date.

48. In December 1980, Guinea had submitted a report to the Human Rights Committee (CCPR/C/6/Add.5) in which it had indicated that it had ratified the International Convention on the Elimination of All Forms of Racial Discrimination. However, that report had not provided any detailed information on that question.

49. While the second report submitted to the Human Rights Committee in 1987 was of interest to the Committee on the Elimination of Racial Discrimination in that it referred to the enjoyment, on an equal footing, of the rights listed in article 5 of the Convention, it did not deal in detail with the question of racial discrimination as defined in article 1 of the Convention.

50. The people of Guinea had recently adopted a new Constitution that was fundamentally different from the preceding one. Furthermore, the Guinean Government had requested the Committee to postpone consideration of its report, which, for technical reasons, it had been unable to submit at the

present session. In that connection, he said that the letter to be sent to the Guinean Government should indicate that the Centre for Human Rights was willing to assist it in solving those problems.

51. The reason the Committee had nevertheless decided to reconsider the initial report of Guinea was that it wanted that State party to realize that the obligation incumbent upon it by virtue of the Convention to submit periodic reports on the racial situation in the country was not to be taken lightly.

52. The Committee might therefore invite Guinea to undertake to submit its next report by a specific date. The report should be drafted in the light of the revised general guidelines and the consolidated guidelines prepared by the Committee, as well as the human rights reporting manual.

53. Mr. WOLFRUM said that article 1 of the new Guinean Constitution was entirely in keeping with article 1 of the Convention, since it provided that all citizens should be treated on an equal footing without any discrimination on the grounds of race, origin, ethnic origin, sex, religion or opinion.

54. The recent adoption of the new Constitution and the resulting changes made the initial report completely irrelevant; it was therefore more appropriate than ever that Guinea should submit a new report to the Committee.

55. Mr. de GOUTTES said that he, too, would like to have more information on the new Guinean Constitution, as well as further details about the ethnic composition of the population.

56. In connection with article 5 (b) of the Convention, he wished to be informed about the fate of the Guinean and Liberian populations which had crossed the border to escape from the conflict in Liberia. Was it true that some of those persons had been detained for several months because they had been suspected of supporting the Liberian rebel chief, Mr. Charles Taylor (see Amnesty International report for 1991)?

57. How many Guineans who had left their country when Mr. Sékou Touré had been in power had returned since?

58. Was it true that most of the power was in the hands of the "Soussou" ethnic group and that another ethnic group, the Malinké, was deeply entrenched in the police force?

59. The CHAIRMAN proposed that, as suggested by Mr. Lamptey, he would send a letter to the Governments of Sierra Leone, Swaziland and Guinea, together with the summary records of the relevant Committee meetings, in order to inform them of the views expressed by the Committee.

It was so decided.

Second periodic report of Zaire (CERD/C/46/Add.4)

60. Mr. BANTON, Country Rapporteur, said that the absence of any member of the Permanent Mission of Zaire was all the more regrettable as he knew from a reliable source that the Mission had some days previously received a list of the questions he was about to ask.

61. He recalled that, according to the United Nations Demographic Yearbook for 1988, Zaire had had a population of 33,450,000, with 40 per cent in centres of 2,000 or more persons. According to the Statesman's Yearbook for 1990-1991, there were currently about 320,000 refugees in Zaire, including 300,000 from Angola. There were at least 200 distinct ethnic groups in Zaire speaking four main languages: Kiswahili, Tshiluba, Kikongo and Lingala. There were minorities of Sudanese in the north, Nilotes in the north-east and Pygmies and Hamites in the east.

62. Although a new Constitution had been adopted in 1978 and amended in 1980, the questions he was about to ask were based on the legislation in force at the time of the submission of Zaire's second periodic report. If a further report became available by August 1991, the questions might need to be revised.

63. Article 10 of the 1974 Constitution of Zaire provided that all acts of racial, ethnic and religious discrimination and all regional propaganda liable to jeopardize the internal security of the State or the territorial integrity of the Republic were prohibited.

64. Was that provision part of the new Constitution? If so, of which article? Were all such acts prohibited or only those which were liable to jeopardize the security of the State? Did the word "acts" include restrictions and preferences as referred to in article 1, paragraph 2, of the Convention? Did the grounds of unlawful discrimination include colour and national origin? Were persons of partly African and partly non-African origin protected by the article? Was any one Government department, such as the Department of Citizens' Rights and Civil Freedoms responsible for coordinating Zaire's policy for eliminating racial discrimination as described in the second periodic report?

65. In connection with article 2, he asked what steps were being taken to ensure that all public authorities complied with the laws for the prevention of racism, tribalism and racial, ethnic, tribal or regional discrimination, as mentioned in section II (a) of the second report. Was there any check to see whether the proportion of persons of a particular ethnic origin employed in a particular authority corresponded to their proportion in the region where that authority was situated? The report did not contain any information on measures to encourage integrationist multiracial organizations and movements and other means of eliminating barriers between races (art. 2 (e)), apart from a reference to Zaire's "open" policy with respect to the entry of foreigners.

66. As the second periodic report did not refer to any special measures to ensure the adequate development of certain racial groups, should it be assumed that there were no racial or ethnic groups in need of such measures in Zaire?

67. With regard to article 3 of the Convention, the second report stated that the decree of 13 June 1960 prohibited racial segregation in Zaire. It provided no information, however, on the status of Zaire's diplomatic and economic relations with the Republic of South Africa, apart from stating that the headquarters of the anti-apartheid movement was located in Kinshasa.

68. Was it true that the South African army had trained units of the Zairian army in Zaire in early 1991 and that Zaire was a major importer of South African goods and had been one of the first African States to authorize aircraft of South African airlines to land in its territory? What was the status of diplomatic relations between the two countries?

69. As to article 4, the second report stated that Ordinance-laws 60/131 of 25 March 1960 and 66/342 of 7 June 1966 prohibited incitement to racial hatred, racist propaganda and the financing of groups or organizations advocating racist theories. As those laws had been enacted before Zaire's accession to the Convention, he recalled that, according to article 4, such laws had to be enforced with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights set forth in article 5 of the Convention.

70. In that connection, he asked whether any statistics were kept on the number of cases alleging breaches of prohibitions on racial discrimination by public authorities or of the prohibitions on incitement to racial hatred. If there were no statistics, could any estimate be made of the number of prosecutions, verdicts, etc.? If any cases had gone to appeal, copies of court judgements would be of interest to the Committee.

71. With reference to the prohibition of tribalism, had Zaire experienced difficulty in implementing articles 2 and 4 of the Convention without impairing the right to freedom of association referred to in article 5 (d) (ix)? Had there been any prosecutions under article 6 of Ordinance-law 66/342, which provided for up to 15 days' imprisonment for the non-reporting of the existence of prohibited racial or tribal associations?

72. How was the right to equal treatment before tribunals (art. 5 (a) of the Convention) guaranteed in Zaire and how was the enjoyment of that right free from racial discrimination protected?

73. The right to security of person (art. 5 (b) of the Convention) was recognized in article 13 of the Constitution.

74. The right to vote (art. 5 (c)) was protected from discrimination by article 12, paragraph 2, of the Constitution of 15 February 1978.

75. Civil rights on which information was lacking were the following: the right to leave any country, including one's own, and to return to one's country (art. 5 (d) (ii)); the right to nationality (art.5 (d) (iii)); the right to marriage and choice of spouse (art. 5 (d) (iv)); the right to own property (art. 5 (d) (v)), which might be protected by Ordinance-law 67/241 of 2 June 1967 (art. 2) or the Ordinance-law of 20 July 1973; the right to inherit (art. 5 (d) (vi)); and right to freedom of association

(art. 5 (d) (ix)). However, there was no reason to believe that those rights were not recognized or that their enjoyment free from discrimination was not protected.

76. The right to freedom of movement was guaranteed by articles 25, 56 *et seq*. of the Civil Code. The right to freedom of thought was guaranteed by article 17 of the Code and the right to freedom of opinion by article 18 of the Code and possibly by article 19 of the Constitution. However, since, under article 6 of the Convention, States parties undertook to assure effective protection and remedies to everyone within their jurisdiction, it was appropriate to know what views about the effectiveness of the above-mentioned laws in Zaire were held, for example, by lawyers, newspaper editors and Government officials. The Committee would also like to know what remedies were available to victims of discrimination.

77. With regard to article 5 (e) of the Convention dealing with economic, social and cultural rights, article 1 of the Labour Code (Ordinance-law 67/310 of 9 August 1967) stipulated that the provisions of the Code applied without distinction as to nationality or sex. How were those rights protected against racial discrimination?

78. Nothing was said in the second report about the recognition of the right to form and join trade unions. Was it possible that persons of particular ethnic groups specialized in particular occupations and that some trade unions therefore had an ethnic character?

79. Information was lacking on the rights to housing and public health (art. 5 (e) (iv)).

80. The right to education (art. 5 (e) (v)) appeared to be protected by article 21 of the Constitution. It should be noted, however, that, under article 1, paragraph 1, of the Convention, racial discrimination included acts or omissions which had the effect of impairing certain rights. Thus, if fewer schools were available in an area inhabitated by a particular ethnic group, that constituted discrimination even in the absence of discriminatory intent.

81. In 1980, Mr. Balanda, the representative of Zaire, had told the Committee that some provinces, such as Shaba Province, were disadvantaged in terms of education (CERD/C/SR.487, para. 10) and that a system of favoured treatment for the purpose of university entry had therefore been instituted. It would be interesting to know the results of that policy.

82. In connection with article 6 of the Convention, could any instances be cited of cases where a court had ordered reparation for individuals in recognition of damage suffered as a result of racial discrimination?

83. With regard to article 7, the Committee wished to know what sort of "prejudices which lead to racial discrimination" were most troublesome in Zaire. What measures for combating such prejudices had been found more effective than others?

84. In countries where several ethnic groups lived side by side, political opinion was often a matter of belonging to a particular ethnic group. Thus, in many countries, an all-powerful President would grant favours and privileges to persons belonging to the same ethnic group or coming from the same region as himself. While discrimination based on ethnic origin did not seem to be a problem in Zaire, he would nevertheless like to receive further information about the tragic events which had occurred at the University of Lubumbashi in May 1990. It seemed that a group of policemen belonging to the special presidential division, composed essentially of persons from the same province as the President, namely, Equateur Province, had burst into the campus at night and had beaten to death a large number of students. It seemed that students who came from Equateur Province had been spared and that the policemen had refrained from using firearms in order to lend credibility to the first official version, according to which the deaths had been due to fighting among rival groups of students.

85. He also wished to know whether the Union for Democracy and Social Progress (UDPS), the largest opposition party, recruited its members in a particular ethnic group and whether there was an ethnic dimension to the political conflicts in Zaire.

86. In conclusion, he proposed that, as in the case of the Gambia, Swaziland and Sierra Leone, a letter accompanied by the summary records of the relevant Committee meetings should be sent to the Government of Zaire.

87. Mrs. SADIQ ALI pointed out that, in April 1990, the one-party regime had been abandoned in Zaire and that an electoral code had been drawn up.

88. Mr. BANTON said that he was aware of the recent political events in Zaire, but had refrained from mentioning them because he did not know whether they had an ethnic dimension.

89. Mr. de GOUTTES said it would be interesting to have information about the new Constitution, the abolition of the one-party system and the possibilities of founding new parties and independent trade unions.

90. He agreed with Mr. Banton that, in Zaire, as in other countries, political allegiance often went hand in hand with ethnic origin. The Committee could therefore hardly be blamed for asking questions of a political nature inasmuch as it was extremely difficult to draw a distinction between "political" facts and facts relating to racial discrimination.

91. Mr. SHERIFIS recalled that Zaire had ratified a dozen or so major international instruments and expressed surprise that so large a country should have failed to submit a report for 11 years, even though it had the necessary human resources, as well as a permanent mission in Geneva.

92. Mr. FERRERO COSTA asked about the situation of refugees, particularly Angolan refugees, in Zaire. He also expressed the hope that the next report would contain detailed information on the ethnic composition of the Zairean population and about the position under the Constitution of international agreements in relation to national laws.

93. Mr. SONG Shuhua asked whether the communication sent to States parties following consideration of their reports included the text of the Committee's conclusions.

94. The CHAIRMAN said that the letter sent to States parties was accompanied by the summary records of the discussion devoted to the consideration of their reports. Countries were asked, in particular, whether they wished to receive technical assistance in preparing their reports. The Committee also requested them to undertake to submit their next reports as early as possible and asked them whether they intended to be represented before the Committee.

Initial report of Gambia (CERD/C/61/Add.3)

95. Mr. LAMPTEY, Country Rapporteur, said that, at its 550th meeting on 2 March 1982, the Committee had considered the initial report of Gambia and found that it suffered from some inadequacies. The Committee had requested clarification on some provisions of the Gambian Constitution which appeared to conflict with articles of the Convention. Some members of the Committee had, moreover, suggested that the Criminal Code should be reviewed in the light of article 4 of the Convention, which had mandatory force. Information had also been requested on the ethnic composition of the Gambian population and the impact of particular tribes on the country's political parties. Bearing in mind that, at the time, Gambia had still been under a state of emergency following the bloody attempt to overthrow the Government in 1981, the Committee had sought information on the effect those events had had on the human rights situation in the country. Particular interest had focused on Section 25 of the Constitution and several requests for clarification of various subsections had been made. Furthermore, the report did not refer to the right to seek reparation for any damage suffered as a result of racial discrimination. Lastly, the Committee had asked for the relevant texts of the Constitution and the Criminal Code.

96. At the time, the Committee had had the benefit of the presence of a Gambian representative, who had given preliminary replies to the points raised, and the hope had been expressed that Gambia's next report would furnish the information requested by the members of the Committee and thus respect the obligations deriving from the Convention. Unfortunately, Gambia had failed to submit the second periodic report due in 1982, as well as the subsequent periodic reports. However, in 1983 and 1984, it had submitted an initial report to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights (CCPR/C/10/Add.7 and Add.12). That report gave more detailed information on the 1970 Constitution, the Criminal Code Act and the Criminal Procedure Code Act. Naturally, however, it did not respond to questions asked in the Committee on the Elimination of Racial Discrimination.

97. Since Gambia was in the forefront of the promotion of human rights in Africa, its failure to honour its most basic obligation under the International Convention on the Elimination of All Forms of Racial Discrimination was incomprehensible. The Committee therefore had a duty to call on it to fulfil its reporting obligation. Like all other countries in

the same category, Gambia should be provided with all relevant documentation that would enable it to submit a report which met the concerns of the Committee.

98. The CHAIRMAN noted that the members of the Committee associated themselves with the comments made by Mr. Lamptey.

The meeting was suspended at 12.05 p.m. and resumed at 12.40 p.m.

ORGANIZATION OF WORK (concluded)

99. The CHAIRMAN informed the Committee of the changes in the programme of work for the following week.

The programme of work of the Committee, as amended, was adopted.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Ninth and tenth periodic reports of Iraq (CERD/C/159/Add.2, CERD/C/185/Add.2) (continued)

100. Mr. WOLFRUM read out the concluding observations of the Committee concerning the consideration of the ninth and tenth periodic reports of Iraq, as amended at the beginning of the meeting.

101. Mr. de GOUTTES, recalling that the Committee had decided not to make value judgements on reports of States, said that he would prefer the word "positive" not to be used in the first sentence.

102. Mr. GARVALOV, raising a similar point, expressed surprise that the Committee should find it appropriate to "appreciate" that the Government of Iraq had undertaken to enter into a dialogue with the Committee, but abstain from deploring the fact that Iraq had not provided it with the necessary information.

103. Mr. LAMPTEY reminded the members of the Committee that Iraq had furnished the information it had been required to provide at the time of the submission of its report and that it was under no obligation to furnish additional information. Delegations were free to reply to questions or to refer them to their Governments. Iraq, for its part, had provided the necessary information concerning the period covered by the report. It now had to provide the additional information that had been requested concerning the period during which the events in question had taken place.

104. Mr. SHERIFIS proposed that the laudatory word "appreciates" in the first sentence of the text should be replaced by a more neutral one.

105. The CHAIRMAN suggested that Mr. Wolfrum should consult informally with Mr. Aboul-Nasr, Mr. Lamptey, Mr. Ferrero Costa, Mr. de Gouttes and Mr. Vidas on that point before the Committee's next meeting.

106. Mr. VIDAS said he agreed with Mr. Lamptey that Iraq had submitted the required information for the period under consideration. However, the reason

the Committee had deferred the consideration of the reports was that the State party had requested it to do so. Since then, events had occurred in the country which made the information furnished inadequate.

107. Mr. WOLFRUM said he was surprised at the suggestion that further consultations should be held on a text which he had already read out three times. Replying to the comments made by Mr. Lamptey, he said that he did not contest the fact that the report of Iraq covered the period under review.

However, he had requested some additional information from the Iraqi delegation and the representative of Iraq had responded by advancing such arguments as that the Shi'ites were not a minority or that the question of Kuwait was within the competence of the Security Council. He therefore did not think that the discussion of that issue should be reopened.

108. The CHAIRMAN said that he would like informal consultations to be held on that point before the Committee's next meeting.

It was so decided.

The meeting rose at 1 p.m.

CERD/C/SR.922
14 August 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 922nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

later: Mr. LAMPTEY

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Ninth and tenth periodic reports of Iraq (*concluded*)

Second, third and fourth periodic reports of Côte d'Ivoire

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Ninth and tenth periodic reports of Iraq (CERD/C/159/Add.2 and CERD/C/195/Add.2) (concluded)

1. The CHAIRMAN invited Mr. Wolfrum, Country Rapporteur, to present the final conclusions reached by the Committee on its assessment of Iraq's ninth and tenth reports.

2 Mr. WOLFRUM explained that, after consultations among Committee members, agreement had been reached on the final wording of the Committee's assessment, including the deletion of any words that implied a value judgement. The text read as follows:

> "The Committee records that the Government of Iraq has undertaken to enter into a dialogue with the Committee and hopes that such an attitude will prevail. The Committee acknowledges that Iraq faces economic and political problems as the consequence of the recent events and that first steps have been initiated by it with a view to improving the human rights situation in general and, in particular, the situation of Kurds and other ethnic groups in Iraq. However, the Committee has not yet received the information which would enable it to assess the human rights situation in Iraq. The failure to address the treatment of ethnic groups in Iraq, particularly the treatment of citizens of Kuwait subsequent to 2 August 1990, since Iraq is under an obligation to respect and to ensure to all individuals under its jurisdiction or control the rights recognized in the Convention, is a matter of grave concern to the Committee. The Committee calls upon the Government of Iraq to include the requested information in its eleventh report, due in 1991, and to submit the eleventh report in time for the Committee to be able to discuss it at its next session."

3. The CHAIRMAN said he took it that the Committee agreed to the wording proposed by Mr. Wolfrum.

It was so agreed.

4. The CHAIRMAN said that the Committee had thus concluded its consideration of the ninth and tenth periodic reports of Iraq.

Second, third and fourth periodic reports of Côte d'Ivoire (CERD/C/64/Add.2; CERD/C/SR.510 and 511)

At the invitation of the Chairman, Mr. Mlingui Keffa and Mr. Ntkakpe N'cho Atte (Côte d'Ivoire) took seats at the Committee table.

5. The CHAIRMAN said that Côte D'Ivoire was one of the countries whose reports were overdue and recalled that the Committee had decided that in such cases a country rapporteur would be appointed and the Committee would consider the situation in the countries concerned on the basis of their previous reports and the summary records of the relevant meetings.

6. Mr. MLINGUI KEFFA (Côte D'Ivoire) said that his Government regretted that it had been unable to submit its fifth, sixth, seventh and eighth periodic reports. Its failure to do so had been due to critical economic and administrative difficulties since 1980, and in no way detracted from its determination to meet its obligations under the Convention and from its continued support of the work of the Committee. He requested a three-month period of grace in which to submit a full report covering the period 1980-1991, including replies to the questions and comments raised by the Committee and further information on measures taken to implement the Convention.

7. His Government reaffirmed its profound commitment to the recognized principles of international law, democracy and human rights as set out in the relevant international instruments, to which it was a party. The Constitution contained a provision providing that the Republic of Côte d'Ivoire ensured equality for all before the law, without distinction as to origin, race, sex or religion, and that any particularist propaganda of a racial or ethnic nature and any manifestation of racial discrimination was punished by law. The Government had also adopted civil and penal legislation to prevent and punish discriminatory attitudes and practices; those provisions were contained in the Civil Code, the Code of Nationality, the Code of Civil Procedure, the Penal Code and the Code of Penal Procedure. His country, which comprised some 60 ethnic groups and was host to a substantial foreign community, had also witnessed a process of democratization under the present Government in recent years, with the introduction of a multi-party system. There were now some 40 political parties, some of which were represented in Parliament by members of the opposition, and in some of the largest municipalities by elected mayors. Evidence of Côte d'Ivoire's democratic structures was also to be seen in trade union freedom, with the establishment of numerous independent trade unions, and freedom of the press, with the existence of some 20 newspapers representing the various political trends, and the free sale of foreign newspapers.

8. Côte d'Ivoire was one of the most democratic countries in Africa and stood as an example of political stability and as a land of peace, asylum and good neighbourliness. It had concluded bilateral agreements on the free movement of persons and the waiving of visa requirements with a number of African and European States and was a party to several international instruments and a member of a number of international organizations, notably those of the United Nations system. It had consistently played an active part in regional cooperation and in the establishment of regional and subregional organizations.

9. Committed as it was to the Convention, the Government welcomed the recent significant changes that had taken place in South Africa, to which his country's conception of dialogue had undoubtedly contributed. His Government would continue to encourage dialogue as the only means of working out a new strategy to hasten the complete dismantling of the odious system of apartheid.

It was convinced that the two leading figures in that dialogue, Mr. de Klerk and Mr. Mandela, would show themselves worthy of the Houphouët-Boigny Peace Prize recently awarded to them by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

10. In conclusion, he assured the Committee of his willingness to respond to questions, pending the submission of a detailed report in the near future.

11. Mr. de GOUTTES, Country Rapporteur, said that, unlike many other countries in arrears with their reports, the Government of Côte d'Ivoire had commendably, if tardily, responded to the Committee's appeals and his own representations, had contacted him personally as country rapporteur and, in particular, had sent a delegation to provide explanations to the Committee. He suggested that Mr. Mlingui Keffa's address to the Committee should be circulated to all Committee members.

12. Côte d'Ivoire was one of the countries that had ratified the Convention within a relatively short period after signature. After its ratification in 1973, the Government of Côte d'Ivoire had submitted only two reports and, until the current session had failed to respond to the numerous appeals addressed to it by the Committee. The Committee's consideration of the situation in Côte d'Ivoire should now focus on three questions - the reasons for the long delay in submitting reports, the conclusions the Committee had reached when considering Côte d'Ivoire's previous reports, and what the Committee now expected of the Government of that country.

13. As to the reasons for the long delay, it was clearly not due, as the government representative had explained, to a deliberate lack of respect for the Convention, but to inadequate resources and administrative complexities. However, those problems alone could not explain 10 years' arrears; had the Government accorded political priority to the Convention, the necessary means would surely have been found and the reports submitted. That they had not been was perhaps a sign that the Convention was not perceived as an instrument of priority importance. That being said, the Committee should take account of the fact that many countries had difficulty in meeting all their reporting obligations under international instruments, and that there was a great disparity between States that had the necessary resources and those that did not. There were, of course, such aids to reporting as the Committee's guidelines, the draft model report and the draft model human rights legislation, but the most appropriate solution was to offer assistance to such States in preparing their reports, with the support of the Advisory Services of the United Nations Centre for Human Rights.

14. With regard to the Committee's assessment of the fourth periodic report submitted in 1980 (CERD/C/64/Add.2), the report had been deemed satisfactory from the point of view of its conformity with the guidelines and the presentation of the general political, ethnic, economic and demographic situation of the country. In particular, the Committee had noted the significance of the country's ethnic characteristics, as described in the report, and had observed that Côte d'Ivoire was a fundamentally multicultural society, that its geopolitical situation fostered its multicultural character,

and that a willing contribution was made by non-national communities. Its ethnic and cultural complexity, combined with the preservation of national unity, were undoubtedly among the most characteristic features of the country.

15. With regard to national anti-discrimination legislation, which the report had described in broadly satisfactory terms, he would confine his comments to three main points emphasized by the Committee. The first concerned the right to nationality; the Committee had drawn attention with appreciation to the large number of applications for naturalization by foreigners. The second concerned the right to own property. The Committee had noted that non-nationals, such as Europeans or Syrians and Lebanese, had considerable holdings in the capital of many companies established in Côte d'Ivoire. The third concerned the right to work; it had been reported that Côte d'Ivoire was a party to Convention No. 111 of the International Labour Organisation concerning discrimination in respect of employment and occupation.

16. The main weakness of the fourth periodic report had been the lack of detailed practical information on the effective implementation of domestic legislation, in particular, in regard to the number of complaints filed for discriminatory acts, examples of judgements handed down by the courts, and the widely reported restrictions on press and trade union freedom. By and large, however, the Committee had expressed its appreciation of the fourth report as an improvement on the very succinct initial report.

17. In the short term, the Committee should require the Government of Côte d'Ivoire to provide some information on recent events and, in the longer term, to provide a complete report which followed the Committee's guidelines. First, he wished to know the social consequences of the financial crisis in Côte d'Ivoire during the past five years, following the fall in crop prices. In the spring of 1990, the country had seen strikes and street demonstrations and he asked what measures had been taken to help the most disadvantaged sections of the population. Secondly, he drew attention to the 1991 Amnesty International Report, according to which activists from opposition parties (particularly the Front Populaire ivoirien) had been held for several days without charge, admittedly before the adoption of reforms permitting the existence of opposition parties in April 1991. Similarly, teachers had demonstrated against the fall in their salaries, in March 1991, and trade unionists had demonstrated for free trade unions in April; on both occasions participants had been arrested and held without charge. Thirdly, restrictions on press freedom continued to exist. According to the Amnesty International report, five people had been held for several days in February 1991 for distributing a new opposition newspaper, L'Evénement, whose sale had not been authorized. Also, according to a recent edition of Le Monde, two journalists had been sentenced to three months' imprisonment for writing an article in the weekly Liberté in which they had called President Houphouët-Boigny a "tyrant". Information on all those matters would be welcome. He also wished to know more about the new, independent Ligue ivoirienne des Droits de l'Homme, mostly made up of academics and headed by Professor Degni-Segui, of the Faculty of Law in Abidjan. The formation of the organization, whose aims were ambitious, was a major event; it had actively investigated various attacks on human rights.

18. As far as consisted of the next written report was concerned, the Committee should insist that it consisted of two separate parts. The first

should be a general presentation of the political, economic, social and demographic context in which the Convention was applied. It was particularly important that it should contain an up-to-date breakdown of the population, given that, according to the figures provided by the delegation, the population had increased considerably since the last report, from 6.7 million in 1975, including 22.4 per cent of foreigners, to 12 million, of whom 4.5 million were foreigners. The second part should consist of an analysis of how the various articles of the Convention were applied in practice. It should describe the relevant laws, particularly the Penal Code, as amended in 1981, the application of such laws and any difficulties or complaints encountered. The delegation had made a start on providing such information, but it needed to be more systematic.

Mr. Lamptey took the Chair.

19. Mrs. SADIQ ALI, referring to the delegation's assertion that Côte d'Ivoire had been suffering from a financial crisis since 1980, asked whether there were any signs of improvement and what was being done for the most disadvantaged people. Were their economic, social and cultural rights being respected? The delegation had also said that the country contained 60 different tribes in addition to other African immigrants. She would like to know which were the most backward elements in the population and whether the rural infrastructure was being developed with a view to a shift from reliance on cocoa and coffee. If the issue was not tackled, it could lead to racial conflict. Finally, she pointed out that despite the advent of a multi-party system, charges had been laid against political activists. She asked whether the old order had indeed changed and, if so, how the new order was constituted and what the new freedoms were.

20. Mr. MLINGUI KEFFA (Côte d'Ivoire) said that replies to all the Committee's questions would be contained in the next report, which would indeed appear within three months. He was, however, prepared to answer some questions informally. The economic crisis was due to the 40 per cent drop in the prices of cocoa and coffee, on which the livelihood of 60-65 per cent of the population depended. Even generous quantities of aid could not make up the shortfall. The Government was, however, attempting to help the most disadvantaged; cheap accommodation had been built; unemployment benefit was paid and free medical care and child benefit were provided for poor families. The Government was also encouraging diversification; crops currently produced included cotton, sugar and timber. With regard to the journalists who had been arrested, he said that, under article 7 of the Constitution, a political party could be formed - and several had been formed since 1990 - but there was a national consensus that because of the country's economic difficulties one-party government was preferable. As a rule, people could express whatever views they wished, but the article mentioned by Mr. de Gouttes had been personally insulting to the Head of State, which was illegal under legislation based on a French Act of 1801, as amended in 1942. That situation would be changed under the new Constitution. He added that the journalists concerned had been represented in court and the sentence had been announced publicly. Freedom of expression and of association was respected. Three or four demonstrations had been held daily for several months, so if all participants had been arrested, the whole population of Côte d'Ivoire would be in prison. But those arrested had taken advantage of the demonstrations to commit acts of vandalism. Like other Governments, that of Côte d'Ivoire could not permit the

destruction of buses or municipal vehicles. Those arrested, however, had been released after interrogation. With regard to the Ligue ivoirienne des Droits de l'Homme, also mentioned by Mr. de Gouttes, it had existed since 1990. It had held its congress in Abidjan in July 1990 without outside interference. More details would be provided in the next report. With regard to the ethnic composition of the population, it was difficult to pinpoint which section was poorest in terms of geographical zones. The most that could be said was that the poorest section consisted of coffee and cocoa exporters, who were victims of the international markets in London and New York and who accounted for perhaps 70 per cent of the population. In conclusion, he mentioned his country's difficulties over producing the next report. In a country as poor as his, staff recruitment and coordination presented particular problems. He hoped that assistance might be provided by the United Nations so that the report could be produced more quickly.

21. Mr. de GOUTTES, Country Rapporteur, welcomed the positive aspects of the response of Côte d'Ivoire to the Committee. It had expressed regret for the delay in producing a report; it had given the reasons for that delay, particularly as it concerned administration; it had sent a delegation; it had provided answers to some questions; and it had asked for help from the Centre for Human Rights to finish its report.

22. The CHAIRMAN, thanking the delegation for appearing before the Committee, urged it to meet its three-month deadline. For technical assistance in preparing its next report, the State party would have to make a direct application to the United Nations.

23. Mr. BANTON said that he agreed with Mr. de Gouttes if, as he understood, he was proposing preliminary acceptance of the report.

Mr. Mlinqui Keffa (Côte d'Ivoire) withdrew.

The meeting rose at 4.30 p.m.

CERD/C/SR.923
8 November 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 923rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 August 1991, at 10 a.m.

Chairman: Mr. FERRERO COSTA

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Reconsideration of reports by States parties that are overdue (continued)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

In the absence of the Chairman, Mr. Ferrero Costa took the Chair.

Reconsideration of reports by States parties that are overdue (continued)*

Second to fifth periodic reports of Lebanon (CERD/C/65/Add.4)

1. Mr. WOLFRUM, Country Rapporteur, said that Lebanon had submitted only two reports since 1980. In its previous reports, the Lebanese Government had emphasized that it had been unnecessary to draft new measures with a view to adopting and implementing the International Convention on the Elimination of All Forms of Racial Discrimination, since the principles enshrined in that instrument had always been recognized by Lebanese national law.

2. It was stated in the fifth report that Lebanon's demographic composition was pluralist. That pluralism appeared at the basis of society (the religious infrastructure of Lebanon) and was reflected at all other levels. Lebanon was reportedly a country of religious minorities which had decided to live together within the framework of a unitary State. The nature of the Lebanese regime was determined by those minorities' decision to coexist within one national territory. Respect for religious pluralism had given rise to pluralism in political matters, with regard to which certain special rules had been laid down. In its periodic reports, the Lebanese Government had informed the Committee about the constitutional provisions concerning equality for all Lebanese, the recognition of civil rights and the implementation of article 4 of the Convention. The members of the Committee had asked for further information on the judiciary and the application of the clause relating to equality of rights and had raised doubts as to whether the Penal Code really reflected the obligations deriving from article 4 of the Convention.

3. The previous reports had given only very general information about Lebanon's demographic composition, the latest census having been held in 1932. Since then, some communities had declined in number as a result of low birth rates and/or emigration, while others, including the Shiites, had been gaining because of very high birth rates. According to one of the authors (Labaki, 1986), half of the population were Muslims and half were Christians. With the possible exception of Armenians, Arabic was the mother tongue of all communities.

4. With regard to the current political situation, Lebanon, a parliamentary republic, had a Constitution consisting of a written document dated 1926 and later amended, and an unwritten understanding, the "National Covenant" of 1943. According to that agreement, the President of the Republic was a

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* Resumed from the 921st meeting.

Maronite, the Prime Minister a Sunnite and the ministers and their higher collaborators were chosen according to a special ratio. The President of the Republic was elected by a Parliament whose President was a Shiite and whose members were Christians and Muslims in the ratio of six to five. It was stressed in the latest report - and the Committee had agreed - that such rules were not to be interpreted as instituting inequalities among citizens according to whether they belonged to a given religious community.

5. National and municipal elections were organized on the basis of a quota allocated to the religious communities and the same applied to appointments to the civil service. That system made Lebanon somewhat unusual.

6. The current situation in Lebanon was characterized by fighting between various militias which had resulted in many violations of human rights.

7. In a note verbale dated 22 December 1989 to the United Nations Office at Geneva (E/CN.4/1990/62), the Permanent Mission of Lebanon had informed the Centre for Human Rights that, since the beginning of December 1989, the Israeli occupation authorities and the militias under their control had been conducting a large-scale campaign of arrests "in the Hasbaya area in the so-called 'security belt' which Israel occupies in South Lebanon". The Commission on Human Rights, in its resolution 1990/54, had condemned "the continued Israeli violations of human rights in southern Lebanon".

8. The information provided to the Committee since that latest report was outdated. Several attempts had been undertaken in the past, and others were under way, to reconcile the fighting groups in Lebanon. A positive element in that regard was the agreement recently concluded between Syria and Lebanon. Although account had to be taken of the extremely difficult conditions prevailing in Lebanon, the latter should try to submit the information requested under article 9 of the Convention. However, the Committee, in the letter it was to address to the Lebanese Government, should indicate that it was fully aware of the delicate situation and of the efforts being made to improve it.

9. Mr. VIDAS said he endorsed the recommendation made by Mr. Wolfrum at the end of his statement and proposed that the Committee should support it.

10. Mr. BANTON endorsed the comments made by the previous speakers. He also wanted the summary record to show that, in military cemeteries in Lebanon, the tombs of persons belonging to different religious and ethnic communities had been profaned.

11. Mr. de GOUTTES said that he agreed with Mr. Wolfrum's conclusions. It was important for the Committee to stress the tragic aspect of a ravaged country where everything would have to be rebuilt. However, the Committee ought to insist on obtaining information, especially with regard to three categories of community which had suffered particularly flagrant violations of human rights, namely, the Christian population - military as well as civilian - which had supported General Aoun, the Shiite population, which had been subjected to many arrests by the Army of South Lebanon inside Israel's security zone, and the apparently large numbers of persons arrested by the Amal movement.

12. Mr. ABOUL-NASR said he deplored the fact that the Permanent Mission of Lebanon had not seen fit to be represented before the Committee during the consideration of the Lebanese report.

13. With regard to the suggestion made by Mr. de Gouttes, he did not think that the Committee ought to make a distinction between the various groups which were suffering from the anarchy currently prevailing in Lebanon. No one was innocent, including General Aoun, who had taken refuge in the French Embassy in Beirut in order to escape the proceedings instituted by the Lebanese Government.

14. The events gave the Committee an opportunity to consider the system of population quotas and division practised in some countries. Many States were now disintegrating because their constituent population groups were different from one another. In that connection, it might well be asked why countries which, only a few years previously, had known no confrontation between religious or racial groups were currently in a situation which required the Committee's attention. It was to be hoped that, once the Lebanese Government was in a position to exercise its authority over the territory as a whole - Israel, as was known, still occupied the south - it could send the Committee a report and resume the dialogue with it.

15. He also endorsed Mr. Wolfrum's recommendation and proposed that the Committee should adopt his conclusions.

16. Mr. YUTZIS said that he fully shared the views of Mr. Aboul-Nasr; for a long time, Lebanon had been regarded in Latin America as the "Switzerland of the Middle East", but, tragically, that country was now the very epitome of the phenomenon of "Lebanization" - the dissolution of the historical identity of a people, a nation and a society.

17. Although the Lebanese Government did have its share of responsibility for the situation, it was up to the Committee to appeal to the international community, which was no stranger to the events, to continue the effort to create conditions favourable to the restoration of national unity in Lebanon. In that connection, he hoped that Lebanon could take part, as soon as possible, in the Committee's discussions through a representative.

18. He also endorsed Mr. Wolfrum's recommendation and proposed that his conclusions should be supplemented by the comments of other members of the Committee.

19. Mr. GARVALOV, making a general comment prompted by the situation in Lebanon, said it was up to each State party to combat racial discrimination in the way that was best suited to its particular circumstances. States which had adopted a model that had subsequently turned out to be unsuitable should have the courage to change it.

20. Mr. SHERIFIS said that his country took the situation in Lebanon particularly to heart because the two countries were close to each other. He nevertheless agreed with Mr. Aboul-Nasr that the Lebanese Government should have been represented before the Committee. With regard to a further point raised by Mr. Aboul-Nasr, he thought it would be useful to have an in-depth

study of a phenomenon to be seen in many countries, East and West, in Europe and elsewhere. The Committee might discuss it in plenary session or appoint a working group or special rapporteur to prepare a study on it.

21. The CHAIRMAN said it seemed from the discussion that the country rapporteur's conclusions were endorsed by all the members of the Committee who had spoken.

22. Mr. Aboul-Nasr had expressed concern, shared by other members of the Committee, that no Lebanese Government representative was present and, supported by Mr. Sherifis, had recommended that the Committee should look into the problems which gave rise to situations such as that in Lebanon. Mr. Yutzishad also proposed that the Committee should appeal to the international community to go on trying to create conditions to promote the restoration of national unity in Lebanon.

23. Mr. SONG Shuhua said he shared the concern expressed by the members of the Committee about the seriousness of the situation in Lebanon, which had not submitted a report to the Committee since 1981. That matter should be stressed in the Committee's report to the General Assembly. He supported Mr. Aboul-Nasr's proposal for a study of current ethnic conflicts.

24. Mr. YUTZIS said that he too supported the proposal made by Mr. Aboul-Nasr and seconded by Mr. Sherifis. As much time as necessary should be taken for a thorough analysis, in which he was ready to collaborate. A document on the problems of minorities in modern States could perhaps be presented to the Committee at its next session.

25. Mr. ABOUL-NASR said that many of the same problems arose in various parts of the world; in Africa, for example, mention might be made of Somalia, Ethiopia and other countries. It should be noted that such problems were recent; 15 or 20 years previously there had been no difficulties of that kind. A document such as the one proposed by Mr. Yutzis would therefore be very useful. Although the Committee did have to focus on the decades to combat racial discrimination and on the related programmes, it should also make room for such an analysis of ethnic conflicts, which ought to be fairly broad in scope, involve several persons and be financed out of programme budgets.

26. Mr. RESHETOV said he recognized the value of understanding what had taken place in Lebanon, a country which had, for a long time, been a model of unity and democracy prior to finding itself on the brink of catastrophe. He noted that some ethnic groups in Lebanon had millions of members in other countries - for example, Armenians in the Union of Soviet Socialist Republics. The critical situation in Lebanon did not justify the failure to have a representative attend the meetings of the Committee in order to examine the situation in that country. Referring to the study proposed by Mr. Aboul-Nasr and Mr. Sherifis, he thought that the scope should be clearly defined before the Committee went ahead. In many countries, there were indeed disturbances which arose from ethnic problems varying in age and depth and were of concern to the Committee; the latter, however, should avoid involvement in political situations, whether in Lebanon or elsewhere. The complexity of the situation

in Lebanon was well known; it was related to the Middle East problem in general. In such a context, it would be a mistake to entrust a rapporteur with a study which could have a political dimension.

27. Mr. BANTON said that he shared the concern just expressed by Mr. Reshetov. He also pointed out that a number of important studies on Lebanon already existed. For the moment, it would be better for the Committee to confine itself to studying Lebanon's report.

28. Mrs. SADIQ ALI said that, while she understood the reservations expressed by Mr. Reshetov and Mr. Banton, she thought that it was necessary to see whether approaches other than the integration of ethnic groups could work, as well as how cultural and linguistic diversity could contribute to national unity. Such aspects did indeed relate to the Committee's work. Moreover, she had no knowledge of the earlier studies mentioned by Mr. Banton.

29. Mr. VIDAS said that, in his view, it would be interesting to consider how Governments which applied policies and measures contrary to the principles of the Convention came to create chaotic situations such as that in Lebanon. The Committee should therefore focus on the origins and root causes of ethnic conflicts. To begin with, it might take up that question as from Friday, 16 August, in the context of considering its cooperation with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which was also dealing with the problem.

30. Mr. YUTZIS recalled that, pursuant to article 9, paragraph 2, of the Convention, the Committee's mandate was to make "general recommendations based on the examination of the reports and information received from the States Parties". With regard to Lebanon, the Committee could therefore adopt the conclusions drafted by Mr. Wolfrum and then discuss the general problems arising from situations similar to that in Lebanon. During the discussion, consideration might be given to the possibility of entrusting a study to a rapporteur of an ad hoc group. The Bureau of the Committee might appoint two or three members to form a small working group to submit proposals to the Committee in that regard. If previous studies existed, as Mr. Banton had pointed out, they could be used.

31. The CHAIRMAN invited the Committee to decide on Mr. Wolfrum's conclusions before taking up the matter of the study proposed by Mr. Aboul-Nasr, supported by Mr. Sherifis and other members of the Committee.

32. Mr. WOLFRUM said that he proposed the following conclusions:

> "The Committee notes with regret that the Government of Lebanon was not able to send a representative to the meeting of the Committee, although Lebanon has a Permanent Mission in Geneva. It strongly encourages the Government to resume the dialogue with the Committee and to report in accordance with article 9 of the Convention. In making that request, the Committee takes full note of the complicated political situation Lebanon is facing at present. The Committee calls upon the General Assembly to undertake all efforts to assist Lebanon to overcome the problems it is facing at present."

33. Mr. ABOUL-NASR said that, in his view, the appeal to the General Assembly in the last sentence of the proposed conclusions was not the best solution; such an appeal might be made to the international community.

34. Mr. GARVALOV said he thought that the wording should be: "to the United Nations and the international community".

35. Mr. VIDAS said that the Committee should be more specific and stay within the scope of the Convention.

36. Mr. GARVALOV said that, while he understood Mr. Vidas' objection, he thought that wording was needed to reflect the fact that the situation in Lebanon involved not only internal factors, but also external ones.

37. Mr. LAMPTEY said that, as he saw it, it was not up to the Committee to call upon the General Assembly or the international community to intervene. Its task was solely to determine whether Lebanon was in a position to submit a report and send a representative.

38. The CHAIRMAN said that only the last part of the text proposed by Mr. Wolfrum gave rise to differences of opinion. He therefore suggested that the Committee should adopt the first three sentences of the conclusion and appoint a working group, composed of Mr. Wolfrum, Mr. Vidas, Mr. Lamptey and Mr. Garvalov, to propose wording for the last sentence on which the Committee could generally agree.

39. Mr. de GOUTTES said that he supported the Chairman's suggestion. He nevertheless thought that the Committee should indicate, in its conclusions, that Lebanon had not respected the provisions of the Convention. He therefore proposed that the words "Mindful of the violations of the Convention which had thus occurred" should be added before the words "It strongly encourages the Government to resume the dialogue". He stressed that there was in no case any question of saying who was responsible.

40. Mr. RESHETOV said that, in his view, the Committee was wasting time; it should state outright, in its conclusions, that the current situation in Lebanon no longer justified the absence of representatives from the Committee.

41. With regard to the last sentence of the text read out by Mr. Wolfrum, he fully agreed with Mr. Lamptey. He did wonder whether the Committee was competent to call on the United Nations and the international community; even if it were, he doubted whether that would change things in any way. What really mattered was the implementation of the provisions of the Convention, the submission of reports and the presence of representatives when the reports were considered.

42. The CHAIRMAN proposed that the Committee should set up an informal open-ended working group chaired by Mr. Wolfrum, composed of Mr. Reshetov, Mr. Lamptey, Mr. de Gouttes and Mr. Garvalov and entrusted with the task of drafting a consensus text and submitting it to the Committee.

43. With regard to the suggestion made by Mr. Aboul-Nasr and expanded on by Mr. Sherifis, he proposed the establishment of a working group composed of Mr. Aboul-Nasr, Mr. Sherifis, Mr. Yutzis and Mr. Vidas and entrusted with the task of preparing a document on the question and submitting it to the Committee at the current session.

44. If he heard no objection, he would take it that the two proposals were adopted and that consideration of the report by Lebanon was suspended until the Committee had before it the final text of the relevant conclusions.

It was so decided.

Initial report of Gabon (CERD/C/71/Add.1)

45. The CHAIRMAN said that Gabon had a Permanent Mission in Geneva.

46. Mr. YUTZIS, Country Rapporteur, said that he regretted the absence of a Gabonese delegation. He also noted that Gabon had not submitted any report since its initial one, which had been considered on 2 March 1982. At that time, the Committee had been disturbed by the succinctness of the initial report, which had consisted of only five lines. In that report, moreover, the Gabonese Government had indicated that it had not considered it necessary to envisage any legislative, judicial, administrative or other measures in connection with racial discrimination. The Committee was thus dealing with a State party which, in signing the Convention, had undertaken to respect its provisions, but, in fact, apparently did not deem it necessary to fulfil its obligations; such a situation was unacceptable.

47. According to the available information, it seemed that Gabon had adopted a new Constitution and was making progress towards democracy by authorizing a multi-party system. It had reportedly also recently adopted a charter of freedoms compatible with the Universal Declaration of Human Rights. Its most serious problems were apparently the result of political conflicts which created tension within the country.

48. In view of the situation, the Committee could only regret not having received further reports since the initial report and deplore the fact that Gabon had failed to be represented or to respect any of its obligations under the Convention. He recommended that the Gabonese Government should be urged to send as detailed a report as possible on racial discrimination in Gabon. The Committee should also propose to Gabon, if necessary, that it should avail itself of the technical assistance provided by the United Nations advisory services in preparing its reports.

49. Mr. GARVALOV said he could not accept the Gabonese Government's contention that it did not need to envisage any measures whatsoever of a legislative, judicial, administrative or other nature with regard to racial discrimination, on the pretext that no such discrimination existed among the components of the Gabonese nation.

50. Mr. ABOUL-NASR said that no member of the Committee could accept the attitude of the Gabonese Government. He supported Mr. Yutzis' conclusions and thought that the first thing to do was to determine whether Gabon was having difficulty in preparing its reports and, if so, to offer it assistance.

51. Mr. SHERIFIS said that he would like to know whether the secretariat had been in contact with the Permanent Mission of Gabon and what reasons had been adduced for its failure to send a representative. He noted that Gabon had ratified about a dozen treaties and wondered what such ratification signified for the Gabonese Government. He also wondered whether Gabon had paid its contributions.

52. He therefore approved Mr. Yutzis' conclusions and agreed with Mr. Garvalov and Mr. Aboul-Nasr that the contents of the initial report were unacceptable.

53. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that the secretariat had addressed a letter from the Chairman of the Committee to the Permanent Mission of Gabon. With regard to payable contributions, Gabon had had arrears of US$ 1,064 in September 1990.

54. Mr. YUTZIS reiterated that the Committee should deplore the absence of a representative and the fact that it had before it only one report, whose contents were unacceptable. However, in view of the problems that Gabon might be encountering in preparing its reports, a special recommendation should be adopted to the effect that the United Nations advisory services should inform Gabon about the technical assistance of which it could avail itself in that regard.

55. He assumed that the Chairman and the Secretary of the Committee would inquire into the reasons why Gabon had not submitted a report and would continue to urge it to fulfil its obligations.

56. As to arrears of contributions, he thought that the situation in Gabon was not too serious by comparison with that of other countries.

57. Mr. de GOUTTES said that he supported the proposal made by Mr. Yutzis and Mr. Aboul-Nasr with regard to assistance for Gabon in preparing its reports. When contacts were established with the Mission of Gabon, he would like to have details about the implementation of the charter of freedoms, which was broadly based on the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights, as well as information on the implementation of the new Constitution.

58. The CHAIRMAN said that Mr. de Gouttes' questions would be reflected in the summary record of the discussions on the reconsideration of the reports by Gabon, which would be attached to the letter addressed by the Chairman of the Committee to the Gabonese Government.

59. Mr. YUTZIS said that, in conclusion, it was regrettable that the Committee had before it only an initial report, that the Gabonese Government had sent no representative to engage in dialogue with the experts and that the tenor of the initial report, to the effect that there was no need to implement the provisions of the Convention in Gabon, was unacceptable. Perhaps it

should be stressed, however, that Gabon, despite the difficult political problems it had experienced, had adopted a new Constitution, had paved the way for a multi-party system and had adopted a charter of freedoms in conformity with the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights. It would be interesting, in that regard, to know what effect those two new instruments and the new political situation had had on the implementation of the Convention. The Gabonese Government should be requested to submit, at the next session, the overdue reports on the implementation of the Convention and be invited to avail itself, if it so wished, of technical assistance in preparing its reports.

60. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted Mr. Yutzis' conclusions and recommendations.

It was so decided.

Second to fifth periodic reports of Lebanon (CERD/C/65/Add.4) (concluded)

61. The CHAIRMAN invited Mr. Wolfrum to introduce his final conclusions on the report by Lebanon.

62. Mr. WOLFRUM said that his final conclusions on the report by Lebanon read:

> "The Committee notes with regret that the Government of Lebanon was not able to send a representative to the meeting of the Committee, although Lebanon has a Permanent Mission in Geneva. It strongly encourages the Government to resume the dialogue with the Committee and to report in accordance with article 9 of the Convention. In making that request, the Committee takes full note of the complicated political situation Lebanon is facing at present."

63. The CHAIRMAN invited the members of the Committee to state their views on the draft final conclusions.

64. Mr. GARVALOV said that, if the Committee criticized the Lebanese Government for not having fully implemented the Convention, it should say why. In his view, Lebanon currently found itself in a peculiar situation, which was probably faced by no other country and in which external factors had compounded the internal problems. The political reality in Lebanon had to be recognized for what it was - namely, that there was a political problem which prevented the Lebanese Government from applying the provisions of the Convention in full, and that 15 years previously the country had been in an entirely different situation.

65. Mr. de GOUTTES said he regretted that no mention was made in the final conclusions read out by Mr. Wolfrum of the violations of the Convention which had occurred in the past. He was nevertheless prepared to endorse the proposed text if it was generally accepted, since it did stress that Lebanon currently faced a particularly difficult situation.

66. Mr. YUTZIS said he wholeheartedly supported Mr. Garvalov's approach and considered that the Committee could not claim that a problem could be solved

by ignoring it. That was not the first time in history that those responsible for guiding a State faced difficulty in controlling the domestic situation.

67. On reflection, he agreed with Mr. de Gouttes that the Committee should deplore the fact that human rights violations had occurred in Lebanon. He also thought that the international community should be reminded of its responsibility with regard to the solution to Lebanon's problems. Moreover, nothing in article 2 (a) of the Convention. prevented the Committee from drawing the attention of the United Nations, and consequently the international community, to those problems.

68. The CHAIRMAN asked whether the Committee could reach agreement if the last sentence of the final conclusions proposed by Mr. Wolfrum read: "In making that request, the Committee deplored the violations of human rights, particularly of those set forth in the Convention, which are taking place in that country, while taking full note of the complicated political situation Lebanon is facing at present".

69. Mr. ABOUL-NASR said that he could not support such an amendment. He failed to see, moreover, on what grounds the Committee could make an appeal to the international community in the case of Lebanon, since it had taken no such step on other occasions.

70. The CHAIRMAN proposed that the meeting should be suspended so that the members of the Committee could hold consultations.

The meeting was suspended at 12.20 p.m. and resumed at 12.40 p.m.

71. The CHAIRMAN announced that the members of the Committee had failed to reach agreement on the question of human rights violations and an appeal to the international community and had decided, as a result, to retain the original text which had been proposed by Mr. Wolfrum and which read:

> "The Committee notes with regret that the Government of Lebanon was not able to send a representative to the meeting of the Committee, although Lebanon has a Permanent Mission in Geneva. It strongly encourages the Government to resume the dialogue with the Committee and to report in accordance with article 9 of the Convention. In making that request, the Committee takes full note of the complicated political situation Lebanon is facing at present."

72. The CHAIRMAN invited the members of the Committee who had not already done so to comment on any parts of the text with which they were not fully satisfied.

73. Mr. de GOUTTES said he would have preferred the last sentence of the Committee's final comments to read: "The Committee, while deploring the violations of human rights in that country, takes full note of the extremely difficult situation it is facing".

74. Mr. ABOUL-NASR said he would willingly have supported the proposal made by Mr. de Gouttes if he had added that the human rights violations were occurring because the Lebanese Government was not in a position to exercise its authority in full throughout the national territory.

75. Mr. LAMPTEY said he felt strongly that it was not for the Committee to judge the way in which a State exercised its sovereignty, including the drawing up of an agreement with another State.

76. Mr. YUTZIS said that the facts had to be faced and that it must be recognized that the international community had an important role to play in settling Lebanon's problems.

77. The CHAIRMAN said that, if he heard no objection, he would take it that the draft final conclusions read out following the resumption of the meeting were adopted and that the consideration of the report by Lebanon was concluded.

It was so decided.

The meeting rose at 12.55 p.m.

CERD/C/SR.924
16 August 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 924th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Initial and second to fifth periodic reports of Togo

Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Question of the Committee's sources of information

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Initial and second to fifth periodic reports of Togo (CERD/C/75/Add.12)

1. The CHAIRMAN said that the five reports of Togo had been combined in a single document, issued in 1983. As the Committee had agreed earlier, it would discuss the situation in Togo in the absence of a representative of that country or of a more recent report. The Committee had considered the consolidated document at its 640th and 641st meetings in July 1983.

2. Mr. WOLFRUM, Country Rapporteur, pointed out that Togo had so far reported only once, in 1983, but that the document submitted had contained detailed information. He briefly reviewed Togo's ethnic composition, as discussed in that report, and observed that the Togolese Constitution provided for rights and freedoms without distinction as to origin, sex, belief or opinion, as stipulated in article 5 of the Convention, but did not prohibit discrimination on the basis of language or property. Article 18 of the Togolese Constitution provided that if the Republic was in danger and the smooth functioning of institutions was interrupted, the President of the Republic was to take any measures that the situation required. Although such emergency measures had been taken only once, for a few days following the aggression against Togo by mercenaries in 1986, he asked whether there were any provisions defining the circumstances in which the President of the Republic was empowered to proclaim a state of emergency and regulating its duration; whether it was then possible for the rights and freedoms recognized under article 5 of the Convention to be suspended; whether Togo's National Assembly had the right to review such measures; and whether the President could dissolve the National Assembly in such a situation.

3. According to paragraph 65 of the consolidated report, there had been no manifest cases of racial discrimination in Togo, and it was therefore unnecessary to declare punishable by law any acts, practices, organizations or institutions based on racial discrimination, a view that had been repeated by the representative of Togo at the Committee's 641st meeting. Although the Committee had appreciated the detailed information provided by the Government of Togo, disagreement had been voiced at that meeting regarding the approach taken on the implementation of article 4 of the Convention, and Togo had been reminded that States parties were bound to enact legislation prohibiting racial discrimination, regardless of whether such discrimination occurred. The affirmation that racial discrimination did not exist in Togo had also been challenged by Mr. Sherifis, Mrs. Sadiq Ali and Mr. Lamptey.

4. In its initial report to the Human Rights Committee (CCPR/C/36/Add.5), dated 11 November 1988, it was stated that in Togolese law and practice, there was no discrimination based on race, colour, sex, religion or property (para. 63); that the rights recognized in the Covenant were enjoyed by the entire population of the Republic without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status (para. 64); and that the various ethnic, linguistic and religious groups were entitled to enjoy their own culture and to profess and practise their own religion (para. 229).

5. The information in the report to the Committee on the Elimination of Racial Discrimination was therefore clearly out of date, and he drew attention to a number of subsequent developments also mentioned in the report to the Human Rights Committee.

6. On 9 June 1987, the President of Togo had promulgated Act No. 87-89 establishing the National Human Rights Commission, an autonomous institution to protect the civil and individual rights of citizens, recommend legislation on human rights, organize seminars and symposia on the subject and express opinions on human rights issues. The Commission was composed of 13 members elected for a period of four years. Article 11 of Act No. 87-89 provided that any individual who considered that his human or civil rights had been violated as a result of an act or omission of the Government could submit a petition to the Commission. Non-governmental organizations enjoyed the same right. If the Commission decided that a petition received was admissible, it must, within 14 days, appoint a special rapporteur from among its members to conduct an inquiry. The special rapporteur was empowered to investigate any reports, records or other documents and to enter any premises connected with the inquiry. That was quite a far-reaching mandate. If necessary, he cooperated with the government body concerned in an attempt to find ways of remedying the violation referred to in the petition, and he had to complete his investigation and make recommendations to the Commission within 15 days. If the violation continued, the Commission immediately met to consider ways of bringing it to an end. Although cases of violations were to be considered confidential, the Commission could decide otherwise if necessary.

7. The report to the Human Rights Committee contained no information on the implementation of article 4 of the Convention. Nevertheless, the establishment of the National Human Rights Commission was a positive step towards the promotion of human rights. Further information was, however, needed on the status of that Commission in the courts, and it would be useful for the Committee to receive the Commission's annual reports so as to be able to evaluate its activities.

8. In March and April 1991, student unrest had erupted in Togo, and many persons had been injured. A commisson had been established to investigate those events and the role played by the armed forces. It would be interesting to know what its findings had been. Reference had also been made to the existence of tribal tensions, and he asked what the Government had done to alleviate them. Information should also be provided on the unsatisfactory situation of those farmers who had recently been resettled by force.

9. In conclusion, he said that Togo should be encouraged to resume the submission of periodic reports in accordance with its obligations under article 9 of the Convention.

10. Mr. BANTON said that the case of Togo might be another example of a situation already encountered elsewhere, in which tensions that appeared to be of political origin actually had an ethnic dimension. There was reason to believe that members of the same ethnic group as the President enjoyed preferential treatment in the army and in certain areas of political life. It would be useful to have more information on that subject in the next periodic report.

11. Mr. de GOUTTES said he was grateful to Mr. Wolfrum for giving details of the new National Human Rights Commission in Togo. It was to be hoped that more information would be forthcoming on what that Commission had actually accomplished. According to his information, the Commission had already denounced the illegal arrest in February 1991 of villagers in northern Togo, who had been forcibly displaced by the armed forces from an area near a national park. It would appear that ethnic discrimination had played some part in those events.

12. Following serious demonstrations in October 1990, the Government of Togo had announced that the Constitution would be amended to allow the establishment of new political parties and, if he was not mistaken, the idea of holding a referendum on the new constitution by the end of the year had been raised. The Government of Togo might indicate what progress had been made on those points.

13. Mr. ABOUL-NASR regretted that Togo had not sent a representative to attend the session.

14. In paragraph 1 of the summary record of the Committee's 641st meeting on 21 July 1983 (CERD/C/SR.641), reference had been made to an Interministerial Commission on Human Rights. The next report of Togo to the Committee might provide information on the work which that Commission had accomplished and on whether it had found gaps in Togolese legislation on racial discrimination.

15. Mr. VIDAS said that the Committee should express its interest in receiving information in Togo's next report on the provisions of that country's new constitution.

16. Mr. YUTZIS said that Mr. Banton had raised an important point. It was necessary to establish whether conflicts were strictly political or whether ethnic, linguistic or racial factors were also involved. The Committee had no information on that subject, and Togo must therefore clarify in its next report whether political tensions had an ethnic, linguistic or tribal component and how the Government was dealing with that issue.

17. Mr. WOLFRUM, summarizing his conclusions, said the Committee should express regret that the Government of Togo had not submitted a recent report and had not been represented at the Committee's session, and it should encourage that Government to resume a dialogue by submitting the reports due. In so doing, the Government should deal with the questions raised by the Committee with regard to the introduction and implementation of legislation prohibiting racial discrimination.

18. Mr. ABOUL-NASR said that, in its conclusions, the Committee should always make it clear whether a country had been represented at the session and, if not, whether satisfactory reasons had been given for its absence.

19. The CHAIRMAN announced that the Committee had concluded its consideration of the situation in Togo.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 5) (CERD/C/216)

20. Mrs. SADIQ ALI recalled that, at its thirty-eighth session, the Committee had approved the appointment of the members of its three working groups to examine the documentation submitted to it under article 15 of the Convention and to report to the Committee on their findings, as well as on their opinions and recommendations. The working group on Atlantic Ocean and Caribbean Territories, including Gibraltar, had consisted of Mr. Wolfrum, Mr. Rechetov, Mr. Vidas and Mr. Foighel, with Mr. Yutzis as convener; the working group on Pacific and Indian Ocean Territories had consisted of Mr. Lechuga Hevia, Mr. Garvalov, Mr. Rhenan Segura and Mr. Song Shuhua, with Mr. Sherifis as convener; and the working group on African Territories had consisted of Mr. Ahmadu, Mr. de Gouttes and Mr. Ferrero Costa, with Mr. Lamptey as convener. During the thirty-ninth and fortieth sessions, the working groups had continued to function as constituted at the thirty-eighth session. The Committee had also agreed that she herself would continue to serve as Chairperson of the conveners of the three working groups. She suggested that the latter should inform the Committee of each group's comments and recommendations.

21. Mr. YUTZIS, convener of the working group on Atlantic Ocean and Caribbean Territories, including Gibraltar, read out the group's comments and conclusions, beginning with a general question on the influence of tourism on the socio-cultural life of the inhabitants. Regarding Anguilla, there were no comments, since no data had been provided. Regarding Bermuda, noting that black people accounted for 61 per cent of the population, the working group requested information about the socio-economic situation with reference to the demographic data. In regard to the British Virgin Islands, note had been taken of the economic growth of the economy of the Islands and the improvement in the education system. It was expected that the persistent difficulties for potentially eligible voters to register to vote would be overcome by making the appropriate amendments to the relevant rules. With regard to the Cayman Islands, the working group had taken note of the sustained economic growth of the Islands, but had no further comment. On the subject of the Falkland Islands (Malvinas), it wished to know why there were no legislative instruments concerning human rights. Regarding Gibraltar, there were no comments. Regarding St. Helena, information was sought on the follow-up action taken pursuant to General Assembly resolution 44/428 of 11 December 1989, which noted with concern the trade and transportation dependency of the Territory on South Africa and urged the administering Power to take all the necessary measures not to involve the Territory in any offensive acts by the racist regime of South Africa. Why were the principles set out in the Universal Declaration of Human Rights not embodied in the Constitution of St. Helena? Regarding Montserrat and its constitutional development, information on the outcome of the reported constitutional problem between the people of Montserrat and the administering Power was sought. With reference to the relevant document on the Turks and Caicos Islands, what was meant by "illegal is vigorously combated", and what objectives were pursued by amending the immigration law? The substantial increase in crime had been noted. Finally, with regard to the United States Virgin Islands, what was the effect of the Huri Ken tourism industry?

22. The CHAIRMAN asked whether the Committee might wish to omit from its report any reference to those territories on which no comment had been made.

23. Mr. ABOUL-NASR said that he was not in favour of omitting any information. Indeed, the Committee's functions under article 15 were very clear. It was supposed to receive from the competent United Nations bodies and from the Secretary-General of the United Nations all relevant information, including copies of petitions and of reports concerning legislative, judicial, administrative or other measures relating to the territories in question, and to give opinions and make recommendations. If the Committee had not received the information, as had sometimes been the case, it was its duty to say so. In recent years, it had been unable to fulfil its mandate under article 15 largely for that reason and must report to the Secretary-General on the problems it faced.

24. Mr. SHERIFIS, convener of the working group on Pacific and Indian Ocean Territories, said that the working group had once again found it impossible to fulfil its functions under article 15, paragraph 2 (a), of the Convention, on account of the total absence of any copies of petitions as provided therein. The working group had studied the material furnished under article 15, paragraph 2 (b), and found that there was no valid information concerning legislative, judicial, administrative or other measures directly related to the principles and objectives of the Convention and was therefore unable to express any opinion or make any recommendation concerning the Pacific and Indian Ocean Territories. The working group therefore reiterated its request that it be furnished with the material expressly referred to in article 15 of the Convention so that it would be able to fulfil its functions.

25. Mr. LAMPTEY, convener of the working group on African Territories, said that the working group had considered documents A/AC.109/999/Rev.1 and A/AC.109/1048 and Corr.1/Rev.1, which were working papers on Western Sahara, prepared by the United Nations Secretariat. The working group had taken note of the continuing efforts of the Secretary-General of the United Nations and the Organization of African Unity to promote a just and definitive solution to the question of Western Sahara and, in that connection, had expressed the hope that the proposed referendum would be carried out soon, thus allowing the people of Western Sahara to exercise their right to self-determination. The working group wished to be informed of any further developments on the question of Western Sahara since the submission of the working papers to the General Assembly.

26. Commenting on the question of the inadequacy of the material supplied to the Committee, he said that the situation was not new and required no further discussion. The Committee's conclusions on that point could be summarized for insertion in the appropriate place in the Committee's report to the General Assembly, along with the compilation of the working groups' findings.

27. The CHAIRMAN requested Mrs. Sadiq Ali to consult with the conveners and to submit to the Committee a consolidated report of the conclusions of the working groups for inclusion in the Committee's report to the General Assembly. She might also consider the questions raised by Mr. Aboul-Nasr as to the procedure to be followed and any outstanding questions concerning petitions and reports under article 15.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Question of the Committee's sources of information

28. The CHAIRMAN drew the Committee's attention to a note by the Secretariat on the question of the Committee's sources of information summarizing current practice in United Nations human rights bodies. The note, which had been prepared as a basis for the Committee's discussion, had been circulated to Committee members.

The meeting was suspended at 4.05 p.m. and resumed at 4.30 p.m.

29. Mr. WOLFRUM said that the issue - an important one - had been discussed when he had first joined the Committee. Since then, he had assumed that the Committee could use any information available to it, since the Convention did not specify what sources it should use. The excellent note provided by the Secretariat was completely convincing. The Committee's mandate was to monitor the Convention, so that it was free to use all sources of information. He pointed out, however, that, as experts, the members of the Committee had to exercise responsibility with regard to the reliability of sources.

30. Mr. FERRERO COSTA agreed. Members might use any source of information, but on their own responsibility. Much had happened since the legal opinion of 1972, referred to in paragraph 5 of the note by the Secretariat. At that time human rights had been considered less important. Quoting from paragraph 6 of the note, detailing the practices of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee Against Torture, he pointed out that all those bodies used various sources of information in accordance with their statutes. There was no legal or practical reason to limit the information used by the Committee to that received from States parties, which were obviously biased to some extent. That view was supported by the quotation from the report of the third meeting of persons chairing human rights treaty bodies that was reproduced in paragraph 7 of the note by the Secretariat. The Committee should take a clear decision to accept information from any source, including non-governmental organizations.

31. Mr. LAMPTEY said that the world had not changed as much as some would think since the Committee's establishment. The question of sources had arisen from the outset, but the Committee had not taken a definite decision because of the difficulties involved. It was a sensitive subject and many people had been afraid of establishing a monitoring process for racial discrimination. Outside sources could be manipulated to the disadvantage of States parties. Statements made by the Committee could create problems affecting the stability and order of a State. All members of the Committee knew of cases where erroneous newspaper reports had damaged a State. Reminding members that the Committee had had to seek a legal opinion as long ago as 1972, he pointed out that there were differences between the Committee on the Elimination of Racial Discrimination and the other Committees referred to. He was not opposed to taking a definite decision, but it was important that the implications should be understood. In any event, certain sources would have to be ruled out. Some non-governmental organizations had a responsible attitude, but others did not.

32. Mr. ABOUL-NASR said that during his period of service on the Committee he had grown less dogmatic with regard to the use of sources. The legal opinion of 1972 was open to more than one interpretation. The Committee should take it into consideration, but was not duty-bound to follow it. Under the Convention, the Committee could use three kinds of information. First, under article 9 it could use reports from State parties. Secondly article 12, paragraph 1 (a), referred to its obtaining and collating "all the information it deems necessary", a wide definition; in that context, he asked why, if article 11 permitted States parties to complain of omissions by other States, information from other sources should not be equally valid. Thirdly, there was the more restrictive provision of article 14, paragraph 7 (a). In his view, the Committee should use any information it deemed reliable, but when making recommendations it should restrict itself to information submitted by States parties under article 9.

33. Mr. VIDAS said that in order to fulfil its mandate, the Committee should use all available information, including personal knowledge. All specialized agencies and governmental and non-governmental organizations should be made aware that the Committee not only welcomed, but encouraged the provision of information. Unlike Mr. Lamptey, he believed that there were not enough non-governmental organizations concerned with human rights. No member of the Committee had, in his view, misused information from such a source or held different views as to how it should be used. He agreed, however, that recommendations on compliance with the Convention could be based only on the reports of States parties.

34. Mr. GARVALOV said he, too, thought that the Committee must not sidestep its mandate. As individual experts, elected to the Committee, its members should be prepared to vouch for the authenticity of any information they used. It was an established fact that, informally, the Committee drew on information from other United Nations bodies, including United Nations-sponsored studies on human rights, and from regional human rights bodies, where they existed. The human rights meetings in Moscow in September 1991, and in Helsinki in 1992, would undoubtedly provide a wealth of information from various sources. He would be wary of using information from individuals (except under art. 14) or from newspapers.

35. Mr. BANTON said it was a pity that the functions mentioned in paragraph 5 of the note by the Secretariat were not enumerated. He referred the Committee to his own paper, to be circulated shortly, on a programme of action for the Third Decade to Combat Racism and Racial Discrimination in which he had summarized a discussion that had taken place in the Committee in 1970 concerning those functions. It was clear from that discussion that suggestions and recommendations could be based only on documents from States parties, but otherwise the Committee had the right to decide collectively to use other sources of information. There would be circumstances in which as individuals they might have information which they could not check. They might have doubts or feel obligations to States, to victims of discrimination or to other parties. However, there was no point in having a committee of experts if they were not given scope for their expertise. He was sure that the collective common sense of the Committee would overcome any difficulties. The Committee's present practice was well adapted to its situation and there was no need for modifications.

36. Mr. de GOUTTES said that, at a time when discrimination was on the increase, it was important to ensure that members of the Committee had full access to all the information they needed to fulfil their responsibilities. In that regard the Committee should bear in mind the practice of other treaty bodies, such as the Committee against Torture and the Committee on Economic, Social and Cultural Rights.

37. Mr. YUTZIS said he did not think that the Convention imposed any restrictions on sources of information. In that connection, he pointed out that comprehensive information was not always forthcoming from States parties and that material from non-governmental organizations was often of great value in such circumstances. It was in any case for the experts themselves to exercise responsibility in evaluating information, whatever its source.

38. Mr. LECHUGA HEVIA said that it might be ill-advised to take a formal decision on the matter and that existing practice had proved wholly satisfactory.

39. Mr. RESHETOV said that he agreed with Mr. de Gouttes, and pointed out that the reports produced by Amnesty International, for example, were often of a high standard of objectivity and should therefore be taken into account by the Committee in its deliberations.

40. Mr. SONG Shuhua said that, while members should avail themselves of all sources of information, it was important to avoid a one sided interpretation of such material, particularly when the Committee was making recommendations to Governments.

41. Mrs. SADIQ ALI agreed with the previous speaker on the need for caution in the interpretation of material from unofficial sources, but felt that experts themselves were best able to judge what constituted reliable data.

42. Mr. SHERIFIS said that, although a country's report was obviously the prime source of information, due account should be taken of the excellent material produced by Amnesty International and other non-governmental organizations which enjoyed general esteem, and also of the growing body of decisions in the human rights field emanating from the Conference on Security and Cooperation in Europe.

43. The CHAIRMAN said that a satisfactory formulation might state that in regard to "the use of information from different sources, the Committee will continue to make its suggestions and general recommendations on the basis of the examination of reports and information received from States parties as laid down in article 9, paragraph 2, of the Convention. At the same time, in examining the reports of States parties, members of the Committee must have access, as independent experts, to all other available sources of information, including those of non-governmental organizations, as appropriate, which they should use responsibly and judiciously." He would make the text of his proposal available to the Committee in writing so that the discussion on the matter could be concluded at the next meeting.

The meeting rose at 6.15 p.m.

CERD/C/SR.925
29 October 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

PROVISIONAL SUMMARY RECORD OF THE 925th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. FERRERO COSTA
Mr. SHAHI

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Question of the Committee's sources of information (concluded)

1. The CHAIRMAN recalled that on the previous day Mr. Wolfrum and Mr. Ferrero Costa had pressed for non-governmental organizations to be expressly mentioned in the concluding statement on the sources of information to be used by the Committee, which he himself had drafted. The final sentence, as amended by Mr. Wolfrum, now read as follows: "At the same time, in examining the reports of States parties, members of the Committee must have access, as independent experts, to all other available sources of information, including those of non-governmental organizations, as appropriate, which they should use responsibly and judiciously."

2. He considered that the amendment in no way modified the substance of his statement and accordingly suggested that the Committee adopt the amended text.

3. Mr. LAMPTEY said that he could not endorse the concluding statement by the Chairman as amended by Mr. Wolfrum. He was not against non-governmental organizations (NGOs), but he did not see why the Committee should mention them rather than other organizations; if it did so, it would have to draw up a list of those NGOs which it considered to be trustworthy.

4. It should be borne in mind that members of the Committee engaged in a dialogue with representatives of States parties, who sometimes reacted violently to certain affirmations, and the Committee's image might be tarnished as a result.

5. In conclusion, he proposed that the concluding statement by the Chairman should end after the words "... to all other available sources of information".

6. Mr. FERRERO COSTA said that he did not understand how the Committee could refuse to make a specific reference to NGOs, while acknowledging that it used the information supplied by them.

7. Obviously, some NGOs were less trustworthy than others. The same could be said of any other source of information. In fact, it was up to every member of the Committee to use the information available to him "responsibly and judiciously", as was indicated in the last sentence of the concluding statement by the Chairman.

8. The reason why it was advisable to make a specific reference to NGOs, as most United Nations committees had already done, was that they played an increasing role in the defence of human rights and quite undeniably supplied a great deal of information which enabled the Committee to do its work more efficiently.

9. If, after such a long debate, the Committee decided not to mention NGOs, its image would suffer as a result, since such an attitude might be interpreted as a negative assessment, by the Committee, of NGOs as a whole.

10. In conclusion, he considered that the text proposed by the Chairman was the outcome of mutual concessions and should therefore be adopted by consensus.

11. Mr. WOLFRUM associated himself fully with what had been said by Mr. Ferrero Costa. His point of view was not so far removed from Mr. Lamptey's as it seemed. Mr. Lamptey had said that he, like all other members of the Committee, had used information emanating from NGOs. That was precisely what was indicated in the concluding statement.

12. To be sure, members of the Committee had a duty to check very carefully on the information available to them, since even the most trustworthy NGOs were not exempt from error. That was why the preparation of a list of trustworthy NGOs, as proposed by Mr. Lamptey, did not seem to him to be appropriate.

13. Mr. VIDAS said that he supported the text proposed by the Chairman and suggested an amendment which, he hoped, would make it possible to reach an agreement. The last part of the last sentence would read as follows: "... to all other available sources of information, governmental and non-governmental".

14. Mr. ABOUL-NASR said that he could not support the text proposed by the Chairman, both because he considered that there was no point in stating that members of the Committee were "independent" experts or that they should use the information available to them "responsibly and judiciously" and because he did not see why the Committee should mention NGOs rather than specialized agencies such as UNESCO or ILO, which took an active part in the campaign against discrimination. Thus it was not so much a question of excluding NGOs, as of not favouring them in relation to other bodies.

15. He therefore proposed that the last part of the Chairman's text, beginning with the words "including those of non-governmental organizations ..." be deleted.

16. Mr. LECHUGA HEVIA reiterated his position that, even if everybody used the information supplied by NGOs, he did not see why NGOs should be mentioned rather than other organizations.

17. Mr. de GOUTTES said that he fully supported the text proposed by the Chairman. The documents and information emanating from NGOs often arrived in disorder and through channels of which some members of the Committee were at times unaware. Such a lack of transparency, which sometimes led to misunderstandings, could be corrected if the practice adopted by certain committees, particularly the Human Rights Committee, were followed. In the latter Committee, for example, the secretariat transmitted the documents to the members of the pre-sessional working groups.

18. Could not the Committee on the Elimination of Racial Discrimination request the secretariat to transmit the documents which it received from NGOs to the country rapporteurs and members of the Committee? In that way the impression of non-transparency and poor communication could perhaps be diminished.

19. Mr. SONG Shuhua said that he did not understand why some members of the Committee insisted on making a specific reference to NGOs rather than to other sources of information to which the Committee also had recourse.

20. The CHAIRMAN suggested that the meeting be suspended so that Mr. Lamptey, Mr. Ferrero Costa, Mr. Aboul-Nasr, Mr. Wolfrum and Mr. Vidas could try to prepare a compromise text.

The meeting was suspended at 10.35 a.m. and resumed at 10.45 a.m.

21. The CHAIRMAN read out the following compromise text prepared by Mr. Lamptey, Mr. Ferrero Costa, Mr. Wolfrum and Mr. Vidas: "In regard to the use of information from different sources, the Committee will continue to make its suggestions and general recommendations on the basis of the examination of reports and information received from States parties as laid down in article 9, paragraph 2, of the Convention. At the same time, in examining the reports of States parties, members of the Committee must have access, as independent experts, to all other available sources of information, governmental and non-governmental."

The amended text was adopted unanimously.

Mr. Ferrero Costa took the Chair.

Reconsideration of reports of States parties that are overdue (continued)*

Initial report of Uganda (CERD/C/71/Add.2)

22. Mrs. SADIQ ALI, Country Rapporteur, pointed out that ethnically Uganda was an extremely complex multiracial country. The three principal linguistic groups were the Bantu, the Nilotic and the Nilo-Hamitic. In the forests in the extreme south-west Pygmies were also to be found. The present frontiers cut across linguistic and ethnic regions, and more than 40 ethnic groups lived together in Uganda. English was the official language. Among the many languages spoken, Luganda was the most widely used.

23. Islam had already been brought to Uganda around 1870. Since the introduction of Christianity, religion had become an important factor making for political rivalry.

24. In 1969, Uganda had 74,000 inhabitants of Indo-Pakistani origin, known as "the Asians", who had been engaged mainly in commerce, and 9,500 Europeans, working mostly in the liberal professions. In August 1972, Idi Amin had decided to expel those Asians who did not have Ugandan nationality.

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* Resumed from the 923rd meeting.

25. The population growth rate was 3.8 per cent and the population was estimated to be 16.2 million, as against 9.5 million in 1969. Figures for different ethnic groups were not available.

26. In 1988 defence had accounted for 26.3 per cent of the total budget, education for 15 per cent, health for 2.4 per cent, and housing and social security and welfare for 2.9 per cent. In 1985 the illiteracy rate had been 55 per cent for women and 43 per cent for men.

27. The Government had undertaken economic reforms with the assistance of the International Monetary Fund (IMF) and the World Bank.

28. She then made a brief survey of the country's recent history, which explained the problems that the Government was currently encountering in its efforts to achieve national integration.

29. In 1971 Milton Obote, who had been President since independence, had been overthrown by Idi Amin. In 1962 President Obote had suspended the Constitution and arranged for full power to be vested in himself. In 1967 he had had a new Constitution adopted; it was still in force.

30. After taking power, Idi Amin had turned against the troops from President Obote's tribe, the Langi, and their neighbours, the Acholis. Many of them had been killed or had had to seek refuge in the Sudan or the United Republic of Tanzania. Idi Amin had replaced them by persons from his own district, the Western Nile District.

31. Idi Amin had become increasingly brutal. It is estimated that between 1971 and 1975 from 100,000 to 500,000 persons had lost their lives or disappeared and that about 1 million persons had lost their homes. In 1977 the Conference of Heads of State of the Commonwealth had condemned Uganda for its violations of human rights.

32. The supporters of the former President, Milton Obote, had shown themselves to be resolute opponents of the regime. Milton Obote had returned to Uganda and had begun his election campaign under the colours of his old party, the Uganda People's Congress. A large number of presumed political opponents had been crossed off the electoral rolls. In its report, the Commonwealth Observer Group had described the election campaign as "unpardonable and inexcusable" and "contrary to the law and having no basis in fact". In regions such as the Western Nile and Bouganda, where the Government had few supporters, the army had pursued a scorched earth policy and had engaged in systematic massacres. In mid-1983, Zaire had hosted 60,000 refugees from the Western Nile Province, and the Sudan 20,000. On the frontier with Rwanda, forced displacements had taken place; 25 to 30 per cent of the persons affected by the operation had been genuine Rwandese refugees.

33. Article 20 of the 1967 Constitution, which was still in force, constituted the legal foundation for combating racial discrimination. However, the Committee had taken the view that the provisions of that article were not sufficient to guarantee the implementation of the Convention. As was indicated in the initial report, no specific legislation had been enacted to make the provisions of the Convention directly enforceable before Ugandan courts; the High Court of Uganda had jurisdiction in all cases arising from

the provisions of relevant international instruments to which Uganda was a party (CERD/C/71/Add.2, para. 9).

34. Politically, President Museveni had abolished the parliamentary structure of the State in order to set up an unelected Provisional Government with the support of the army and of the National Resistance Council, composed of a cross-section of political, ethnic and religious personalities. Pending the adoption of a new constitution, parties were forbidden to engage in political activity and power was becoming increasingly centralized. Althought the 1967 Constitution remained technically in force, its provisions concerning the legislative and executive powers were suspended.

35. The 10-point plan drawn up by President Museveni for the interim period provided for the restoration of democracy in the form of a popular village-based democracy, the security of persons and property, the unity of Uganda - religion and tribalism no longer having any political sway - and the campaign against underdevelopment. Furthermore, the Government had enlarged the mandate of the Commission of Inquiry responsible for examining the abuses of the previous regimes by giving it jurisdiction to cover current human rights abuses once the present inquiry was completed.

36. Moreover, the policy pursued by the National Resistance Movement (NRM) towards refugees had been generous, and no case of expulsion or forced repatriation of refugees had been reported in 1990. In 1987 Uganda had acceded to the OAU Convention governing certain aspects of refugee problems peculiar to Africa.

37. With regard to the preparation of a new constitution, the President had undertaken to take account of public opinion on the subject of Uganda's future regime.

38. According to paragraph 18 of Uganda's initial report, the Ugandan Government had not deemed it necessary to enact specific legislation to prohibit racial discrimination, since it had the means to implement the law for the purpose of guaranteeing security and tranquillity for all. Nevertheless, much remained to be done to restore the rule of law in Uganda.

39. The Ugandan court system consisted of magistrates' courts, the High Court and the Supreme Court. Provision was made for procedural safeguards including bail and the right to appeal a verdict to a higher court. However, a systematic shortage of resources ensured that the process was slow and difficult. In some political and security cases, the judiciary was not independent of the executive.

40. In accordance with the recommendations made by the World Bank, the Government intended to reduce the large number of civil servants. The inefficiency and corruption in the civil service had been attributed to civil servants' low level of remuneration.

41. Turning to the question of the implementation of the relevant articles of the Convention, she pointed out that, according to Uganda's initial report (CERD/C/71/Add.2), article 20 of the 1967 Constitution prohibited the adoption of any law that was discriminatory in itself or in its effects. The same article provided that no person should be treated in a discriminatory manner

by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. The exceptions permitted conformed to those provided for in article 1, paragraphs 2 to 4, of the Convention (para. 11). According to paragraph 4 (g) of the same article, the legislature was empowered to make laws by which persons of a particular race or national or ethnic origin might be accorded any privilege which, having regard to its nature and special circumstances ... was reasonably justifiable in a democratic society. To that end, the Government had taken special measures of assistance for refugees in Uganda, including the allocation of land and the provision of education and social services. Furthermore, in November 1982 Parliament had adopted the Expropriated Properties Act under which any property expropriated by the military regime had become revested in the Government under the management of the Ministry of Finance (para. 16). Nevertheless, the sale of that kind of property had sparked off anti-Asian feelings among some Ugandan businessmen, who feared that returning Asians might dispossess them.

42. There were apparently no texts of legislative, judicial or administrative measures giving effect to the provisions of article 2, paragraph 1, of the Convention. However, there were certain indications that the Government was reconsidering its policy. For example, an Inspector General of Government had been appointed in 1986 to examine cases of corruption, mismanagement or human rights violations; he had, nevertheless, played no part in the inquiry into the exactions attributed to the National Resistance Army (NRA) in the northern and eastern provinces. Furthermore, guerrillas of the Holy Spirit Movement (HSM) and the Uganda Peoples Army (UPA) continued to operate in the north and east of the country. In general, a codification of the applicable legal provisions was urgently needed.

43. In his 10-point plan President Museveni had undertaken to secure the unity of Uganda. Nevertheless, ethnic cleavages, tribalism and religious intolerance continued to fuel the wars and political conflicts from which Uganda had suffered for decades. The Government was, however, trying to place at least one representative of every tribe, region and religious group in the NRM cabinet.

44. Measures had been taken to implement article 2, paragraph 2, of the Convention, and the poverty alleviation and economic recovery programmes should, thanks to substantial assistance from abroad, yield results provided that stability was restored in the country.

45. As far as the implementation of article 3 was concerned, Uganda had no diplomatic or consular relations with the apartheid regime of South Africa. Under the legislation on emigration and passports, Ugandan citizens were not allowed to travel to, or reside in, South Africa (para. 22). The Ugandan Government had ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

46. With regard to the implementation of article 4, it was stated in paragraphs 25 to 27 of Uganda's initial report that the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and incitement to violence against any race or ethnic group were punishable under the provisions of the Penal Code relating to offences against the State, the person or liberty. Pursuant to the provisions of the Penal Code and of the

Constitution that prohibited racial discrimination, the formation of racist associations or organizations was considered to be illegal and criminal. Finally, it was stated that Uganda intended to comply with decision 3 (VII) of the Committee on the Elimination of Racial Discrimination, adopted on 4 May 1973, and that it would transmit to the Committee and to the Secretary-General the text of the relevant legislation. In that connection the Committee, at its 680th meeting, had taken the view that it would not seem that the provisions of the Penal Code summarized in paragraph 26 of the report covered all the situations provided for by the Convention. They appeared to deal with incitement to violence, but the other hypotheses provided for in article 4, under which simple incitement to racial hatred, for example, could be the basis for legal action, had not been taken into account (CERD/C/SR.680 para. 13). The Committee had also asked whether senior officials who had broken the law had been punished.

47. As far as the implementation of article 5 of the Convention was concerned, it should be borne in mind that until the insurgency in the northern provinces had been put down it would be difficult for Uganda to guarantee to everyone equality in regard to civil, political, economic, social and cultural rights. An independent association created in 1990, the Uganda Law Society, issued a human rights report in which it criticized the NRM's failure to respect the law and the independence of the judiciary. The Committee on the Elimination of Racial Discrimination itself had requested further information on those provisions of the Constitution that provided a legal basis for a series of fundamental rights. In the case of civil and political rights, most of the political and extrajudicial executions had been the result of the military conflict between the NRA and opposition elements, and it would seem that all parties had been involved in the killings. The right to security of the person and to protection by the State, which was provided for in the texts, was largely disregarded. Furthermore, no elections would be organized until the new constitution had been prepared. In theory, every Ugandan had the right to freedom of movement within the country, but in practice travel in the northern and eastern regions had remained difficult because of sporadic attacks by heavily armed guerrillas and bandits. Ugandans were free to emigrate and to travel abroad. The right to nationality remained unfettered, as well as the right to marriage and to the choice of spouse. Some 80 per cent of the country's total population survived on subsistence agriculture and small-scale cultivation. The property of married women was traditionally held in the name of their husbands. There was no State religion in Uganda, and the Government exercised no control over denominational publications. In 1950 the authorities had not allowed the re-registration of the Jehovah's Witnesses, but the Prime Minister was reported to have intervened in their favour. Over 15 newspapers in the country published a wide range of points of view and reported on such matters as human rights violations, the civil war and the corruption that was said to exist in governmental and military circles. Nevertheless, the Government had arrested three journalists because of the questions they had asked President Kaunda of Zambia at a press conference. The right to freedom of opinion and expression, too, had thus been subjected to considerable restrictions, due to the ban on the activities of political parties.

48. With regard to economic, social and cultural rights, although in principle the State recognized the right to work, it was not in fact possible, having regard to the country's present level of development, for it to

guarantee the exercise of that right to everyone in Uganda. Employment in State enterprises and the public sector was competitive and determined on the basis of merit, without discrimination of any kind (CERD/C/71/Add.2). Wage and salary earners were obliged to supplement their income from other sources.

49. Under Ugandan law, all workers had the right to form trade unions. The exercise of the rights set forth in article 5 (d)(iii) to (v) of the Convention depended on the overall economic situation, defence spending making big holes in the budgets needed for other activities. Finally, all Ugandan citizens were reported to exercise their right to equal participation in cultural activities, without distinction (para. 44).

50. As far as the implementation of article 6 was concerned, recourse procedures in cases of discrimination seemed to be ineffective, and Uganda would have to enact special laws in order to put that article into practice.

51. With regard to the implemention of article 7, it was stated in the initial report that the Government was considering the introduction of specific courses on human rights (para. 48). The attention of the authorities should be drawn to the supplementary guidelines concerning the implementation of article 7 of the Convention. It was, however, noteworthy that the Uganda Human Rights activists had left Sweden to settle in Uganda after the fall of the former President Obote. The group actively engaged in informing the population of its civil rights, prepared confidential reports to the Government on the subject of abuses, and made public statements.

52. In conclusion, her evaluation of Uganda's report was as follows:

(i) The initial report was no longer up to date, since in the meantime President Museveni and the NRA had taken power in 1986.

(ii) Pending the adoption of the new constitution, it was difficult to make an accurate assessment of what judicial, legal and administrative measures had been taken to implement the Convention.

(iii) President Museveni's 10-point programme gave an idea of the direction taken by his policies. The World Bank, IMF and the European Economic Community seemed to support that plan, as did NGOs such as OXFAM, the International Committee of the Red Cross and the Save the Children Fund.

(iv) In the final analysis, everything would depend on the speed with which the Government and other parties put an end to the military conflict which was raging in the north and east, thereby establishing peace in the country. The years of unrest had contributed to the deterioration of Uganda's social fabric and to the decline of its infrastructure. Because of the insurgency, civilians had been displaced, arbitrary arrests and detentions had taken place, the right to a fair trial and the freedoms of expression and assembly had been restricted, and citizens were unable to change their Government.

53. The CHAIRMAN congratulated Mrs. Sadiq Ali on her exhaustive and thorough work, which gave an updated picture of how the situation in Uganda had evolved since the Government had submitted its initial report.

54. Mr. WOLFRUM unreservedly supported all the elements in the report presented by Mrs. Sadiq Ali. However, he wished to raise three points. First, certain activities of the Ugandan army in 1988 and 1989 had led to massacres of civilians and the Ugandan Government had indicated that a commission of inquiry would establish the facts. Three years after those incidents, the commission had not arrived at any concrete results. Would that be due to administrative problems or to a lack of zeal in revealing what had really happened? Second, another commission of inquiry had been established to shed light on civilian losses in September 1990 following action taken in the northern region against members of the Holy Spirit Movement. Once again, no conclusions had been published. Third, over 100,000 villagers in the Kumi district were reported to have been evacuated at the beginning of 1990 in order to be transferred to "protection camps". The operation had caused a loss of human lives, since the infrastructure of the camps, particularly food, had been inadequate. There again, there was a lack of information on that kind of incident. It would therefore be desirable if, in its next report, the Ugandan Government could supply further information on the three points he had raised.

55. Mr. de GOUTTES stressed the exemplary nature of Mrs. Sadiq Ali's report.

56. Elaborating upon one of the points raised by Mr. Wolfrum, he inquired whether the Committee had any information on the report thought to have been prepared by Amnesty International in December 1990 on the massacres of civilians committed by the Ugandan armed forces in the rural areas. If such a report had been published, what had been the reaction of the Ugandan Government?

57. Mr. BANTON joined previous speakers in congratulating Mrs. Sadiq Ali on her report.

58. Assuming that the assessment made by Mrs. Sadiq Ali at the end of her oral statement would be used for preparing the Committee's conclusions concerning its consideration of Uganda's report, he would like to add a passage reporting the Committee's interest in the bodies responsible for inquiring into human rights violations, especially those having an ethnic dimension. In particular, he was thinking of the Commission of Inquiry set up in August 1986 and of the Council Investigative Division, a permanent body which the Government had agreed in principle to institute. It would be helpful if the Government could indicate the problems which those bodies had encountered and the results which they had been able to obtain.

59. Mrs. SADIQ ALI replying to Mr. de Gouttes, said that a document entitled "Memorandum to the Government of Uganda on an Amnesty International mission to Uganda in January 1982 and further exchanges" had been published in April 1983.

60. She proposed that, bearing in mind the comments which Mr. Banton had just made, the evaluation which she had read out should be supplemented by a fifth paragraph reading:

> "(v) Great interest was expressed concerning the commissions which had been set up to inquire into human rights violations, and in particular into violations having ethnic dimensions, the problems which those commissions had encountered, and the results which they had obtained."

Mr. Shahi resumed the Chair.

61. Mr. ABOUL-NASR thanked Mrs. Sadiq Ali for her very comprehensive report but requested that she review the conclusions. It did not seem very diplomatic, in paragraph (i), to refer to the coming to power of the President; the initial report would be out of date even if the President had remained the same person. In paragraph (ii), the reference to the impending adoption of a new constitution was tantamount to unduly singling out Uganda, since one third of the States parties to the Convention currently had their constitutions suspended. Furthermore, even if a new constitution had been adopted, that would not give Uganda a free hand. The implementation of article 4 of the Convention, in particular, could not be kept in abeyance pending the adoption of a constitution. The attitude of the World Bank, IMF and so on reflected in paragraph (iii) had no connection with racial discrimination; it was probably concerned with economic reforms. Neither were the opinions of the NGOs mentioned in the same paragraph very pertinent. In paragraph (iv) it was stated that citizens were unable to change their Government. Why conclude that Ugandan citizens wished to change their Government? He therefore suggested that Mrs. Sadiq Ali review her conclusions, with the assistance of other members of the Committee, so as to make them less divergent from the Committee's conclusions concerning other reports and more in harmony with the Convention.

62. Mr. YUTZIS noted that a political change was obviously under way in Uganda, with administrative, economic, social and other consequences. What was not so obvious, on the other hand, was the relationship between political problems and ethnic, racial or linquistic groups. In many cases racial problems were the surface expression of political problems. The Committee therefore needed to obtain up-to-date information on that subject.

63. The CHAIRMAN said that, in view of the comments that had just been made, he wished to suggest that Mrs. Sadiq Ali, together with Mr. Banton and Mr. Aboul-Nasr, prepare a final version of the conclusions which the Committee could adopt. For the moment he thanked Mrs. Sadiq Ali and declared the reconsideration of Uganda's report to be concluded.

Fifth periodic report of Fiji and previous reports: (CERD/C/89/Add.3, CERD/C/R.63/Add.1, CERD/C/17/Add.2 and CERD/C/64/Add.4)

64. Mr. WOLFRUM, Country Rapporteur, began by recalling that Fiji's fifth periodic report (CERD/C/89/Add.3), which had been almost identical to its fourth periodic report (CERD/C/64/Add.4), had been considered by the Committee at its 629th meeting in 1982. On that occasion several members of the Committee had expressed doubts as to the validity of the reservations entered by Fiji when it had acceded to the Convention. Fiji had reserved the right not to apply articles 5 (c), 5 (d)(v), 2, 3 or 5 (e)(v) as far as the school system was concerned. Fiji had also made an interpretative statement concerning article 4. Doubts had also been expressed as to whether Fiji's

Constitution and Penal Code were fully in conformity with its obligations under article 4, and whether the electoral system and land legislation were in conformity with article 5. It had also been pointed out that the demographic balance was delicate and that the Committee therefore had to be cautious in any recommendation concerning the internal political balance in Fiji.

65. According to the 1976 census, described in the fifth report, 259,932 ethnic Fijians, 292,896 Indians and 35,310 persons of other origins had been living in Fiji at that time. According to the 1986 census, there had been 329,000 Fijians, 348,000 Indians and 37,000 persons of other races. Since the coup d'état in 1987 many Indians had emigrated.

66. In May 1987, following the defeat of the Alliance Party by the Indian-dominated National Federation and Labour Party, Col. Rabuka had taken power in a bloodless coup d'état. He had set himself the goal of maintaining power in the hands of ethnic Fijians, who accounted for 47 per cent of the population, as well as their rights to the land, of which they controlled 83 per cent. The 1970 Constitution had guaranteed the land rights of ethnic Fijians. It had been abrogated and Fiji had become a Republic in 1987; in 1990 the "Constitution of the Sovereign Democratic Republic of Fiji" had been promulgated.

67. In that Constitution a central role was given to the Great Council of Chiefs (Bose Levu Vakaturaga). Before the coup d'état the Great Council of Chiefs, originally created by the British colonial Government, had comprised all Fijian members of the House of Representatives, eight chiefs appointed by the Minister for Fijian Affairs, seven other Fijians appointed by him and two or three representatives, depending on the population, from each of the 14 provinces. Since the coup d'état, the members of the House of Representatives had been excluded and there had been no more elections to the provincial councils, the members of which had been appointed by the President. On 9 June 1990, the Great Council of Chiefs, in its rump composition, had decided that in future it would consist of 42 representatives of the provincial councils, on the basis of three for each province, three nominees of the President, three nominees of the Prime Minister, one nominee of the Rotuma Council, and five ex-officio members - namely the President, the Prime Minister, Col. Rabuka, the Minister for Fijian Affairs and the Permanent Secretary for Fijian Affairs. It was noteworthy that the representativity of the Great Council of Chiefs was diminished by the fact that all the provinces had the same number of representatives whereas their populations varied substantially.

68. Under the Constitution, the Great Council of Chiefs chose the President and 24 of the 34 members of the Senate and must be consulted by the Cabinet on measures to advance and protect Fijians. The President chose the Prime Minister from the House of Representatives and, on his advice, the other ministers, who might be from either House of Parliament. A majority of members of the Cabinet could thus be appointed without ever having been elected.

69. In elections to the House of Representatives, there were several racial rolls: one for Fijians, one for Indians, one for Rotumas and one for the other races. Racial divisions were thus institutionalized. The "other races" - Europeans, part-Europeans, Chinese and other Pacific

islanders - had 5 seats, the Indians 27 and ethnic Fijians 37. Thus the Indians were underrepresented and the Fijians - and, to a lesser extent, the other races - overrepresented. In the Senate, the Indian representation was insignificant: there were 24 Fijians appointed by the President on the advice of the Great Council of Chiefs, 1 Rotuma and 9 members of other communities appointed by the President. Even among ethnic Fijians the distribution of seats in the House of Representatives was not equitable: 5 were allotted to the towns and 32 to the provinces, whereas, according to the 1986 census, 33 per cent of ethnic Fijians lived in the towns. Another obstacle for ethnic Fijians was that they had to be enrolled in the registers of their traditional clans, whereas one third had gone to live in the towns and many had moved to other provinces. That had been noted in the report submitted in 1989 by the Fiji Constitution Inquiry and Advisory Committee, called the "Manueli Report", from which he quoted. In that report it was stated, in particular, that a considerable number of Fijians were not enrolled in the clan registers and therefore could not vote.

70. Chapter II of the Constitution provided that freedom of expression could be limited by laws designed to protect "the reputation, the dignity and esteem of the institutions and values of the Fijian people, in particular the Great Council of Chiefs". Freedom of movement could also be restricted by laws limiting movement or residence in Fiji of certain persons "in the interest of defence, public safety or public order". Whereas a two-thirds majority of both Houses of Parliament was required to amend the provisions of chapter II, those provisions could be suspended by an act invoking special powers against "subversion" adopted by a simple majority or by the proclamation of a state of emergency by the President. That rule might become very relevant in the future, since, according to section 94 (3), "it shall be the overall responsibility of the Republic of Fiji military forces to ensure at all times the security, defence and well-being of Fiji and its peoples".

71. In conclusion, he pointed out that Fiji's previous reports were out of date, as were the questions asked by members of the Committee. At the most recent session of the General Assembly, the representative of India in the Third Committee had accused Fiji of racial discrimination. He recommended the Committee to send a letter to the Government of Fiji requesting information on the constitutional changes and on the way in which the Convention had been implemented in Fiji since the submission of its latest report.

72. Mr. ABOUL-NASR expressed regret that no representative of Fiji was present to participate in the reconsideration of his country's reports. He requested the country rapporteur to confirm whether the Indians of whom he had spoken really were Fijian citizens and whether the Great Council of Chiefs was composed solely of Fijians. If the replies to those questions were affirmative, the accusation made by the representative of India to which Mr. Wolfrum had referred was understandable.

73. Mr. WOLFRUM confirmed that the Indians of whom he had spoken were indeed Fijian citizens; their ancestors had been in Fiji for less time than those of ethnic Fijians but they held the same citizenship. The Indians did not participate in the Great Council of Chiefs. The statement by the representative of India in the Third Committee was self-explanatory.

74. Mr. de GOUTTES said that the thorough analysis which Mr. Wolfrum had just made of the provisions of the Fijian constitution was, to say the least, surprising; since the 1987 coup d'état the Constitution assured ethnic Fijians supremacy and a disproportionate number of seats in Parliament, thereby institutionalizing ethnic discrimination. The Committee had rarely had occasion to identify such discrimination. It must therefore be pointed out, in the letter to be sent to the Fijian Government, that the situation was exceptional. Information should be requested from the Government on the acts of violence that had been committed in Fiji against members of the Indian community and against Indian temples. He was referring, in particular, to the kidnapping of a teacher who, it so happened, was president of a "group against racial discrimination".

75. Mr. BANTON took the view that if the Committee wanted the Fijian Government to resume the dialogue, it must encourage it to do so by indicating in its comments that it was aware of the special situation in which the country found itself. The reason why the States parties had not objected to the reservations formulated by Fiji in accordance with article 20, paragraph 1, of the Convention or brought the matter to the Committee's attention as provided for in article 11, paragraph 1, might be that they had wished to show the Fijian Government that they were aware of Fiji's special position.

76. The situation in Fiji was comparable to that of other countries which had been colonized. Under the colonial regime, ethnic minorities had left their regions to play a useful role in the political and economic system established by the colonial authorities. However, when those countries had recovered their independence, the minorities had been left isolated. Such had been the case, for example, of the Chinese in Malaysia and Indonesia or of the Indians in Guyana, Malaysia or Myanmar. It was noteworthy that quite a number of those countries had not ratified the Convention or were encountering difficulties in complying its terms. The Committee might indicate that it considered Fiji to be one of those countries.

77. Nevertheless, Fiji should not put up permanent barriers between the different ethnic groups. The Committee should request the Fijian Government to send it some information on the policy pursued in order to eliminate all forms of racial discrimination and to promote understanding among all races, as well as on the measures taken to that end. The point at issue was not to obtain the withdrawal of the reservations formulated when the Convention had been ratified, but to ascertain what progress had been made.

78. In connection with the electoral system, he pointed out that, when Fiji's fifth periodic report (CERD/C/89/Add.3) had been considered, Mr. Partsch had stated that, in view of Fiji's demographic composition, the adoption of an electoral system modelled on the British system would make the indigenous population a permanent minority. He hoped that Fiji would display imagination and adopt an electoral system which took account of the country's ethnic diversity.

79. Finally, referring to the comments made by Mr. Aboul-Nasr, he wished to point out that, when Fiji's fifth periodic report had been considered, the Chairman of the Committee, speaking in his personal capacity, had considered that the Fijian electoral law was not concerned with a distinction between

citizens and non-citizens but with a distinction among citizens and that it was therefore not covered by article 1, paragraph 2, of the Convention.

80. Mr. FERRERO COSTA said that he approved of Mr. Wolfrum's observations and considered that Mr. Banton had added some very important sociological and historical elements which could help the Committee to examine and understand Fiji's special situation. Nevertheless, he was very concerned about the application of the Convention in Fiji. First, the Fijian Government had not submitted a report since 1982, whereas it had an obligation to submit one every two years. The Committee should remind it of its duties and request it to renew the dialogue and at the same time notify it of the Committee's concern regarding the constitutional rules adopted, which led to the institutionalization of a system establishing a distinction between the various ethnic groups. In practice, the population of Indian origin would be subjected to racial discrimination. He would like the Committee to invite the Fijian Government to give, in its next report, some information on the implementation of article 5 of the Convention, particularly with regard to the situation of the population of Indian origin in relation to that of ethnic Fijians.

81. With regard to the reservations made by Fiji when it had ratified the Convention, he pointed out that, when Fiji's fifth periodic report had been considered, the Chairman, speaking in his personal capacity, had stated that the Committee had already indicated that, in its opinion, an interpretative statement or declaration could not be considered to be a reservation and consequently could in no way modify the implementation of the Convention. The Chairman had urged the representative of Fiji to draw his Government's attention to the matter again. Mr. Houshmand, the representative of the Secretary-General, had indicated that, when Fiji had expressed reservations with regard to the Convention, the text had been distributed as usual by the Legal Counsel. The other parties had made no objection or observation at that time. It had therefore been concluded that the Convention had entered into force in Fiji, subject to those reservations. He found it regrettable that under the terms of article 20 of the Convention, a reservation could be held to be incompatible with the provisions of the Convention only if two thirds of the States parties considered it to be so. In the present case, however, the reservations formulated by Fiji were contrary to the very spirit of the Convention. He proposed that the Committee request the Government to withdraw its reservations.

82. He approved of the idea of sending a letter to the Fijian Government informing it of the position taken by the Committee, which considered that the Fijian Constitution was an act of racial discrimination, and inviting it to review its reservations and to include in its next report some information on the economic and social situation of the population.

83. Mr. YUTZIS said that the Committee ought to consider the possibility of grouping States according to their special features and then determining what methodology should be adopted for the analysis of their reports. That was what had been done, for example, by the Committee with regard to those States which did not comply with their reporting obligations. Special Rapporteurs had been appointed to look into the matter for the purpose of providing the Committee with the relevant information.

84. Commenting on Mr. Banton's observations, he recognized that it was sometimes useful to take account of historical elements, not to justify but to explain the actual situation in a given country.

85. Faced with the reservations that had been formulated and the fact that no report had been submitted for nine years, the Committee, while notifying the Fijian Government of its concerns, should do everything possible to induce the Government to resume the dialogue that had been interrupted. As a member of the Committee, he endorsed Mr. Wolfrum's comments and considered that the Fijian Government should send a report and a representative to inform the Committee on the facts of concern to it so that it could carry out its mandate properly.

86. Mr. RESHETOV thanked Mr. Wolfrum for his detailed analysis of the situation in Fiji, but expressed reservations about the direction the discussion was taking. The Committee had concentrated on the problem of the representation of the various ethnic groups in political organs which were considered not to reflect the country's demographic composition. He pointed out that political representation strictly proportional to a country's demographic composition existed nowhere. On the other hand, the Committee had hardly mentioned the current racial tensions in Fiji. The two phenomena were closely linked: the absence of adequate political representation was at the root of the racial tensions.

87. Mr. WOLFRUM proposed that the Committee indicate, in its conclusions, that it deeply regretted the absence of a report and of a representative from Fiji and invite the Fijian Government to resume the dialogue and to take account, in its next report, of the questions that had been put by members of the Committee. Although he doubted that the Constitution was in conformity with the provisions of the Convention, he considered it preferable to wait for a representative of Fiji to provide some explanations on the subject before coming to any conclusion on the subject.

88. The CHAIRMAN noted that Mr. Wolfrum's final comment could have been applied to other countries whose situation had been considered in the absence of a report and of a representative and in respect of which opinions had been expressed.

89. Mr. RESHETOV proposed that the Committee, in its conclusions, thank the Fijian Government for having submitted a report, since other States parties had not even sent an initial report.

90. Mr. YUTZIS asked for which report the Fijian Government should be thanked.

91. Mr. FERRERO COSTA said that he did not agree with Mr. Reshetov's proposal. The Committee had no reason to thank a State whose report had been submitted nine years earlier. He even took the view that Mr. Wolfrum had been very moderate in his remarks and wondered whether the Committee should not, in its conclusions, express its concern regarding the implementation of the Convention in Fiji.

92. The CHAIRMAN suggested that the Committee reflect on that point.

The meeting rose at 1 p.m.

CERD/C/SR.926
16 August 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 926th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Reconsideration of reports of States parties that are overdue (continued)

Second Decade to Combat Racism and Racial Discrimination

Draft model national legislation

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Reconsideration of reports of States parties that are overdue (continued)

Fifth periodic report of Fiji (CERD/C/89/Add.3) (concluded)

1. Mrs. SADIQ ALI said that it was her understanding that the Indian dominated National Federation party in alliance with Timoci Bavandra's Fiji National Party was the first multiracial political alliance in that country to come to power, and that that was the reason for the *coup d'état*. The current Constitution of Fiji had been adopted by decree and not by referendum.

2. As Mr. de Gouttes had noted at an earlier meeting, the encouragement afforded by the Government of Fiji to a racist organization, the militant Tankei (landowners') movement which was well represented in the Rabuka Cabinet, which had practised discrimination against the Indian population was in contravention of article 4 of the Convention. However, Indians were not the only population group to suffer from discrimination; the urban Fijians and some of the provinces were also underrepresented in Parliament.

3. Under article 2 (e) of the Convention, States parties have undertaken to encourage multiracial organizations as a means of eliminating barriers between races, and article 7 enjoined States to take measures to combat prejudices which led to racial discrimination. She would welcome further information on the efforts being made by the Government of Fiji in that regard. She was particularly concerned by what appeared to be attempts by the Government to institutionalize racism and ethnicity through the separation of races.

4. Mr. WOLFRUM, Country Rapporteur, said that the Committee's general conclusion was the outcome of consultation between a number of its members, and that it would read: "The Committee notes with regret that Fiji has not reported to the Committee and was not able to send a representative to the meeting of the Committee. Having discussed the new constitutional developments which have taken place in Fiji, the reservations it has made on ratification, and taking note of the express concern of members of the Committee about possible discrimination against Indians in respect of the exercise of political and economic rights, the Committee calls upon the Government of Fiji to resume its dialogue with the Committee by filing the reports which are due. In reporting, the Government should take account of the questions asked and the concerns raised at the meeting at which the Committee discussed Fiji."

5. The CHAIRMAN said that the Committee had concluded its consideration of the situation in Fiji.

Fourth periodic report of the Bahamas (CERD/C/88/Add.2)

6. Mrs. SADIQ ALI, Country Rapporteur, said that the fourth periodic report of the Bahamas, which had been combined in a single document with the third report, had been considered by the Committee in New York in 1983. It had not conformed to the guidelines for reporting, concentrating instead on the

observations made by the Committee during the consideration of the second periodic report. The Committee had found the document somewhat unbalanced, in that it dealt mostly with the application of article 5 of the Convention, while not all the information supplied was directly relevant to the question of racial discrimination.

7. In connection with article 26 of the Constitution, the Committee had taken the view that the Government should consider the possibility of bringing the definition of the expression "discriminatory" into line with that of the Convention. In reply it had been stated that, in the opinion of the Government of the Bahamas, the term "discriminatory" as defined in the Constitution was in practice sufficiently comprehensive to cover the definition of racial discrimination as contained in the Convention. A constitutional amendment would require a three-fourths majority in both Houses of Parliament, which might not be easy to achieve. The Committee, however, considered that the definition should be amended.

8. No information had been provided on specific measures for securing the adequate advancement of certain backward racial or ethnic groups. Such information was necessary in view of the great diversity of the racial composition of the Bahamas.

9. The Constitution of the Bahamas established the fundamental rights of the individual, irrespective of race, ethnic origin, political opinion, colour, creed, sex and religion, but no specific legislation had been enacted to make the provisions of the Convention directly enforceable in the courts. In its fourth periodic report, the Government had reiterated that it had not found it necessary to enact legislative or administrative measures other than those available by virtue of the Constitution itself. The Government should therefore be asked for more information with regard to article 2 of the Convention and for a precise analysis of the existing legislative, judicial and administrative provisions for implementing that article.

10. While members had expressed satisfaction in connection with the implementation of article 3 of the Convention, they had noted that there were no existing penal laws implementing the obligations set out in article 4. In connection with its reservation to article 4, the Government had stated that it interpreted that article as imposing the obligation to adopt additional legislation only if it considered such legislation necessary, that the Constitution prescribed the judicial procedure to be followed in the event of violation of the fundamental rights of the individual, and that acceptance of the Convention did not entail obligations which went beyond the limits of the Constitution or acceptance of any obligation to introduce judicial procedures beyond those which it prescribed. Members of the Committee had agreed that the reservation did not constitute an impediment to the Government's fulfilment of its obligations under the Convention.

11. The Committee had also requested information in the next periodic report regarding the anticipated adoption of legislative measures to implement the International Convention on the Suppression and Punishment of the Crime of Apartheid, a question which would also be relevant to article 4 of the Convention on the Elimination of All Forms of Racial Discrimination and which might be raised again with the Government.

12. The information provided in respect of article 5 had been found satisfactory by the Committee.

13. In its report the Goverment had informed the Committee that there was no need for legislation providing reparation for damage suffered by victims of racial discrimination, since individuals had the constitutional right to appeal to the Supreme Court of the Bahamas for redress. It would be useful to know whether legislation provided for remedies other than those to be found in the Constitution, and whether any relevant cases had arisen.

14. The Government's attention should be drawn to the additional guidelines, adopted on 17 March 1982, for the implementation of article 7 of the Convention.

15. It may be that the Government was unable to spare the financial resources to send a representative to attend the Committee's session in Geneva, it could have submitted a report.

16. In conclusion, she said that the Government's attention should be drawn to the model anti-discrimination legislation being prepared by the Centre for Human Rights. If it needed technical and advisory assistance in preparing its reports, it should approach the Centre for Human Rights.

17. Mr. SHERIFIS said that he agreed with the conclusions reached by Mrs. Sadiq Ali, although it should be pointed out that the Bahamas had a very good human rights record. It was thus regrettable that the Government had not submitted a report for some time.

18. The CHAIRMAN said that a general conclusion would be drawn up on the basis of consultations that took place.

The meeting was suspended at 3.45 p.m. and resumed at 4.20 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6)

Draft model national legislation (CERD/C/1991/Misc.4)

19. Mr. BERNARD (Legislation and Prevention of Discrimination Branch, Centre for Human Rights), speaking as a member of the drafting group that had produced the model national legislation for the guidance of Governments in the enactment of further legislation against racial discrimination (CERD/C/1991/Misc.4), described the methods used in preparing the text. The drafting group had been composed of five legal experts from different parts of the world, each of whom had special experience in areas relevant to the model legislation, such as discrimination directed against indigenous populations, minorities or immigrant workers. Each of the five had examined a specific subject, such as discrimination in housing, education or in connection with freedom of opinion and expression. It was the first time that the Centre for Human Rights had drafted such legislation.

20. In producing the text, the drafting group had primarily drawn on the International Convention on the Elimination of All Forms of Racial Discrimination but had also considered the national legislation of 44 different countries.

21. The CHAIRMAN noted that in many cases, national legislation fell short of the provisions of the Convention, and the Convention should therefore be taken as the basis for any model legislation, supplemented by provisions from national legislation that might be regarded as useful.

22. Mr. LAMPTEY said that the draft model legislation was a creditable effort and would be helpful to the States parties to the Convention. It was an appropriate time for the Committee to be considering the matter, because in many parts of the world, and in particular in Africa, new constitutions were being framed and legislation was being revised, and such a text would be useful in that context.

23. In his view, the structure of the text should be slightly modified. Some sections of the draft contained legislative provisions, whereas others were actually guidelines or suggested measures, and it was necessary to separate the two. For example, the existing part II (General principles), part III, A., paragraph 6 (Sanctions and compensation), part III, B. (Recourse procedures), paragraph 3, and part III, C. (Independent national authority against racial discrimination) should all be included under the heading of general principles and the suggested measures that a model legislation might contain. The rest of the text would then consist of legislative provisions.

24. Regarding part III, A., paragraph 1 (Offences of opinion and expression), he suggested that the introductory sentence should be amended to read "In the context of this Act, and in conformity with international law, freedom of opinion and expression and freedom of peaceful assembly and association shall be subject only to the following restrictions:". That would make it clear that the restrictions concerned racial discrimination only.

25. Mr. WOLFRUM said he shared the Chairman's concern that the starting-point for the model legislation should be the Convention. National legislation was often imperfect and its use would not be conducive to producing a harmonious set of rules that was universally acceptable.

26. The model legislation sought to enforce the prohibition of racial discrimination primarily through the penal code. That was an inappropriate approach and was bound to fail. The provisions in the Convention on training and education, which made the Convention more effective, were missing from the model legislation. He cited the example of Germany, where a discussion was under way on whether the goal of environmental protection could best be achieved through penal law or through incentives, training and education; the same question could be posed with regard to the goal of eliminating racial discrimination. The penal code, while useful, should not be relied upon exclusively.

27. The trend of all human rights instruments had been to promote greater freedoms, and for that reason he had reservations about part III, A., 1., a.(3). If such a provision were to be implemented, it would mean that a television broadcast of Shakespeare's "Merchant of Venice", which contained obvious elements of racial discrimination, would be an offence. He could cite similar examples. It was important to strike a balance between freedom of expression and the limitations that might have to be placed on that freedom.

The freedoms enshrined in the Convention constituted the yardstick against which the model legislation should be measured.

28. Mr. de GOUTTES, endorsing the comments made by Mr. Lamptey and Mr. Wolfrum, said that more time was needed to examine the document, the French version of which he had received only recently. Subject to further comments when the Committee returned to the discussion, as he hoped it would, he considered that an explicit reference to the Convention, or to the precise wording of articles 1 and 5, was needed in part I, under the heading "Definitions".

29. Part III, A., "Offences and sanctions", prompted several comments. The heading of paragraph 1, "Offences of opinion and expression" might, at least in French, give rise to misinterpretation and should be replaced by wording such as "Opinion and expression constituting offences of racial discrimination". A close examination should also be made of the important question of the compatibility of some of the proposed provisions with the general principles of criminal law and criminal procedure, particularly the relevant provisions in the International Covenant on Civil and Political Rights. He was referring, in particular, to Part III, A., paragraph 1., subparagraphs a.(1), a.(2) and a.(4), where it was necessary to ensure conformity with such principles as that of personality as applied to offences and sanctions, and the principles of presumption of innocence, of the restrictive interpretation of criminal law, and of what was usually thought of as the sovereign opinion of the criminal judge in determining who was responsible when an offence was committed.

30. A similar comment could be made regarding the scope of competence of the Independent National Commission against Racial Discrimination referred to in part III, section C., namely, ensuring compatibility between certain powers entrusted to the Commission and the "natural" powers of existing criminal courts, and specifically its competence to receive complaints, to conduct inquiries and to bring legal action.

31. Mr. ABOUL-NASR said that the document under consideration required further study and comparison with other documents, since it reflected only a Western or Judaeo-Christian approach to human rights, completely neglecting other cultures and civilizations and making no effort to understand or take into account the conditions and problems prevailing in the countries that most needed assistance, namely, those of the third world. That was clear from the bibliography, particularly the monographs, quoted at the end of the document. The group preparing the study should undoubtedly have been more representative of the present-day membership of the United Nations.

32. He also had reservations about the group's somewhat narrow mandate in preparing model national legislation for the enactment of further legislation against racial discrimination only. He asked the representative of the Centre for Human Rights whether a more useful and practical approach would not have been to study the implementation and enactment of legislation on human rights in general, taking into account the needs and experience of the countries who most required it, and consulting experts from those countries.

33. Mr. YUTZIS said that it was useful to have basic background information for a discussion of the issue, even though there was no Spanish version, and

the French version had only recently been made available. He agreed that the Committee needed time to reflect seriously on the text, which not only involved legal aspects, but also had social, ethical and anthropological dimensions. He suggested that a representative, open-ended working group should be set up to study the text and make additional proposals for discussion by the Committee, either at the current session or at the next session if that were not feasible.

34. The CHAIRMAN said that the Committee should complete its discussion of the item at the current session in order to convey its comments to the Centre for Human Rights in time for the model national legislation to be submitted to the General Assembly at its next session. The idea of establishing an open-ended working group was a constructive one and he suggested that Mr. Yutzis should be the convener.

35. With reference to the emphasis placed by Mr. Lamptey and Mr. Wolfrum on the need to ensure that freedom of expression was not unduly curtailed in the proposed text, he said that the wording of article 19 of the International Covenant on Civil and Political Rights should be taken into account as being more explicit than that of article 5 of the Convention; it should also be broadly acceptable to States parties.

36. Mr. RESHETOV, stressing the crucial importance of the document under consideration, asked the representative of the Centre for Human Rights whether it would be possible, in due course, to append an annex reproducing verbatim the relevant provisions of national constitutions and legislation referred to at the end of the document under the heading "Sources article by article". Interested countries might have difficulty in obtaining the original texts, and the document's importance and usefulness would be greatly enhanced if the relevant provisions were quoted in full.

37. He did not agree with Mr. Aboul-Nasr that there were different philosophies on human rights; indeed, the object of United Nations activities in that field was to produce a single code on human rights that would be respected by all. That aim was also pursued in the countries themselves, taking into account specific national characteristics.

38. Although he did not think that the bibliography as a whole represented a purely European approach, he, like Mr. Aboul-Nasr, cautioned against the negative impression left by the sources listed under the heading "Doctrine", which certainly did not reflect the whole of world doctrine on the subject.

39. Mr. VIDAS said he, too, thought that examination of the document should be deferred.

40. In his view the whole section B. of the bibliography, dealing with doctrine, should be deleted. An important question had been raised in the Committee's earlier discussions, namely, the relations between federal Governments on the one hand and national and local authorities on the other.

It was essential for Governments to ensure, through legislation, that the Convention was implemented by all national authorities. That emphasis was missing from the document, although it had clearly been in the minds of its authors in including the provisions of part III, C., paragraph 3. The point needed to be amplified to cover the different practices in different States.

41. The CHAIRMAN, speaking in a personal capacity, said that in its revision of the draft, the working group should try to ensure that the model national legislation conformed as closely as possible to the Convention.

The meeting rose at 5.25 p.m.

CERD/C/SR.927
13 November 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 927th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

CONTENTS

Second Decade to Combat Racism and Racial Discrimination (continued)

The meeting was called to order at 10.15 a.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6) (continued) (General Assembly resolutions 45/105 and 45/155; Commission on Human Rights resolution 1991/30; A/CONF.157/PC/1 and Add.1; A/CONF.157/PC/2; CCPR/C/42/CRP.1/Add.25; A/45/443; A/45/525)

1. The CHAIRMAN invited the Committee to consult, with reference to the agenda item under consideration, General Assembly resolution 45/155, Commission on Human Rights resolution 1991/30, the provisional agenda of the Preparatory Committee for the World Conference on Human Rights and the annotations (A/CONF.157/PC/1 and Add.1), the document on the organization of the work of the Committee (A/CONF.157/PC/2) and the preliminary comments and recommendations by the Human Rights Committee to the Preparatory Conference for the World Conference on Human Rights (CCPR/C/42/CRP.1/Add.25). In addition, at the previous session, members had discussed at length the contribution that the Committee could make to the work of the World Conference, and he would refer them in that respect to the summary records of the Committee's 899th and 911th meetings (CERD/C/SR.899/Add.1 and CERD/C/SR.911).

2. Mr. BANTON also drew the attention of members to the section on the World Conference on Human Rights on pages 13 and 14 of the report on a programme of action for a Third Decade against Racism and Racial Discrimination, which he had prepared in compliance with the Committee's request. In his view, the list of questions that the Human Rights Committee recommended for study during the preparations for the Conference should also include an item on ways and means of improving the implementation of human rights instruments within States. Actually, the item would be included not in the Human Rights Committee's document but among the recommendations formulated by the Committee on the Elimination of Racial Discrimination for the Preparatory Committee.

3. Mr. ABOUL-NASR said he wondered how the question of the Committee's contribution to the work of the Preparatory Committee should be tackled, in view of the number of documents submitted. He proposed that the Committee should review the preliminary comments and recommendations of the Human Rights Committee to the Preparatory Committee.

4. The CHAIRMAN said he was aware of the difficulties mentioned by Mr. Aboul-Nasr and suggested that the meeting should be suspended so as to give members time to consult the documents before them.

The meeting was suspended at 10.30 a.m. and resumed at 11.10 a.m.

5. The CHAIRMAN, recalling that, at the previous session, Mr. Banton had thought that the Committee should play a leadership role with regard to the Conference, invited him to take the floor.

6. Mr. BANTON, introducing the paper he had prepared about the World Conference on Human Rights, pointed out that, in paragraph 2, he raised the question of whether the Committee should not prepare for the participants at the Conference a shorter and less technical essay than the review of the Committee's work during its first 20 years. It was important to raise the

morale of people working in the human rights field, who so often received news of killings and inhuman acts, by keeping them informed of the progress achieved and the areas in which improvements could be made. That would encourage them to renew their efforts. In the same paragraph, he had stressed the importance of social research. It might draw the attention of public opinion to the economic and psychological costs of racial discrimination, demonstrate that the repercussions were often underestimated and thus persuade legislators to take action in that field. Paragraph 3 of the document dealt with the indivisibility of all categories of human rights. Paragraph 4 referred to General Assembly resolution 45/155, which in paragraph 1 (c), called for an examination of ways and means to improve the implementation of existing human rights standards and instruments, and thus of the Convention on the Elimination of Racial Discrimination. Paragraph 5 needed no comment.

7. The CHAIRMAN drew the attention of members to the annex to Commission on Human Rights resolution 1991/30, on the World Conference, and in particular to paragraph 4, in which the Commission recommended that the Preparatory Committee should consider how the World Conference and its preparatory process could work towards improving implementation of existing human rights standards and instruments, evaluating and formulating concrete recommendations aimed at improving methods and mechanisms used by the United Nations in the field of human rights and ways to minimize duplication.

8. Mr. VIDAS said he endorsed Mr. Banton's comments, but if the Committee wished to make progress in its work, it must decide what it was going to take as a basis for its contribution to the work of the Preparatory Committee. He proposed the Committee should take as its starting point General Assembly resolution 45/155, which defined the six objectives of the 1993 World Conference on Human Rights, and thus decide what contribution it should make to each of those objectives. As to the first objective, it could review and assess the progress made in the field of human rights since the adoption of the Convention. It could also contribute to an examination of the relation between development and the enjoyment by everyone of economic, social and cultural rights, for when the Committee studied the reports submitted by States parties it examined any relation between racial discrimination and the enjoyment of those rights. With regard to the objective of improving the implementation of existing human rights standards and instruments, he would point out that the Committee had decided to consider at its current session how to improve evaluation of the implementation of the Covenant. Mr. Banton had, in the document he had just introduced, mentioned mechanisms and methods employed in the field of human rights and interesting concrete proposals had been put forward at the Committee's previous session. It would be very useful to set up a small working group which could meet after the present session to bring together all the proposals, so that the discussion could be continued at the next session, in March, a discussion that would be more valuable in that the Preparatory Committee for the World Conference on Human Rights would have held its first session meanwhile.

9. At the Committee's previous session, it had been proposed that the Chairman should participate in the work of the Preparatory Committee. He supported that proposal.

10. Lastly, at the Committee's next session the subject of the World Conference on Human Rights should no longer be considered under the agenda

item relating to the Second Decade to Combat Racism and Racial Discrimination but should constitute a separate agenda item. That would make the Committee's work easier.

11. The CHAIRMAN, speaking as a member of the Committee, said that, like Mr. Vidas, he too thought that the World Conference on Human Rights should form a separate agenda item at the Committee's next session.

12. Mr. ABOUL-NASR asked what documents the Committee should prepare for the World Conference and what role the Committee's representative would play at the Preparatory Committee's first session.

13. It seemed that the Preparatory Committee's principal task would be to work out the provisional agenda for the Conference, which he hoped would include an item on racial discrimination and another item on the relationship between the various existing human rights instruments at national, regional and international levels and on how to improve cooperation between the bodies responsible for applying those instruments. At the Conference, those bodies might share their experience.

14. Generally speaking, it was to be hoped that the Conference would lay stress on improving existing instruments rather than drafting new standards or setting up new bodies.

15. The CHAIRMAN invited Mr. Houshmand (Representative of the Secretary-General) to comment on the agenda for the first Preparatory Committee (A/CONF.157/PC.1 and Add.1) and to state what part treaty bodies would play in that Committee.

16. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Preparatory Committee's provisional programme of work (A/CONF.157/PC.2) had also been distributed, together with two communications from Germany and Argentina relating to the venue of the forthcoming World Conference.

17. He drew attention to the objectives the General Assembly had assigned to the World Conference in paragraph 1 of resolution 45/155 and stressed that treaty bodies, including CERD, were directly concerned by those objectives, in particular those set out in subparagraphs (c) to (f), of paragraph 1.

18. In reply to a question by Mr. Aboul-Nasr, he said that racial discrimination could not constitute a separate item in the Conference's agenda. The Conference would not examine specific questions such as torture, the rights of the child or other problems but would deal with the overall action of the United Nations in regard to human rights and with the failures and successes of the United Nations in that field, more particularly since the 1978 Tehran Conference. It would also consider the prospects for future action.

19. In participating in the work of the Preparatory Committee, the CERD representative could draw on the ideas formulated by Mr. Banton in his excellent working paper on the preparation of studies for the Conference.

20. The CHAIRMAN recalled that Mr. Banton had said it was possible to produce a shorter and less technical essay than the one reviewing the work of the

Committee since it had been set up, a document which would relate the progress achieved in the struggle against racial discrimination since the adoption of the Universal Declaration of Human Rights in 1948. He wondered whether that document could be ready before the Preparatory Committee's first session.

21. Mr. HOUSHMAND (Representative of the Secretary-General) said that the revised version of the document reviewing the Committee's work was currently in press. He added that the Committee's representatives on the Preparatory Committee should inform the latter about the studies that CERD was thinking of producing for the World Conference in 1993.

22. Mr. ABOUL-NASR said that he understood matters much more clearly following Mr. Houshmand's explanation, and asked how the final agenda for the World Conference would be adopted.

23. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Preparatory Committee had been instructed to prepare the Conference's agenda, with due regard for the General Assembly's guidelines in resolution 45/155, the recommendations in the annex to Commission on Human Rights resolution 1991/30 and any suggestions that treaty bodies might make.

24. When the Preparatory Committee tackled item 7 of its agenda, entitled "Studies and other documentation for the World Conference", it would be for CERD's representative to indicate what type of studies CERD was thinking of preparing for the World Conference.

25. Mr. WOLFRUM said he supported the remarks by Mr. Banton, Mr. Aboul-Nasr, and Mr. Vidas. For the time being, it was not for the Committee to encourage the drafting of new standards or instruments or the establishment of new institutions such as an Office of a High Commissioner for Human Rights or an International Court for Human Rights. From a more modest standpoint, it would be better to strengthen the current procedure for implementing human rights instruments at the international level and improving the current system of applying those instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination. In that connection, he called the Committee's attention to the report published under symbol No. A/44/668, which contained a good analysis of the present system of submitting reports.

26. He proposed two solutions to the problem of overlapping competences among the various treaty bodies (A/44/668, para. 44). One solution, limited in scope, would be to ask the Secretariat to collect all the information received by the various bodies and to place it at everyone's disposal; the other solution, which was more far-reaching and had already been rejected, would be to amalgamate the existing bodies into two or three bodies.

27. To implement the International Convention on the Elimination of All Forms of Racial Discrimination, CERD had three means available to it: evaluation of country reports, consideration of communications from individuals and consideration of communications from States. However, so far the Committee had only used the first and second methods - it had not yet really made use of the third. Why had the Committee never applied the procedure of considering communications from States? What might be done to encourage States to use that method?

28. Drawing on the experience acquired in the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, he would also suggest the possibility of conducting inquiries.

29. Lastly, he wished to stress that his suggestions simply supplemented those already put forward by Mr. Banton and Mr. Vidas.

30. Mr. de GOUTTES said he supported the proposal by Mr. Vidas to appoint the Chairman of the Committee as its representative at the first session of the Preparatory Committee for the World Conference on Human Rights, without prejudice to the participation of other members at later sessions on particular topics.

31. Furthermore, he approved the themes proposed by Mr. Banton for the World Conference. Priority should be given to improving the procedures for implementation of existing instruments. Furthermore, he wished to add two items to those enumerated by Mr. Banton. First, recalling that, in paragraph 9 of the annex to its resoluton 1991/30, the Commission on Human Rights had recommended that the Preparatory Commission for the World Conference on Human Rights should examine "Ways and means by which the World Conference could encourage the establishment or strengthening of governmental and non-governmental institutions at the national level aiming at the promotion of human rights", he expressed the hope that stress would be laid on the part that national human rights committees could play; indeed, the Committee could profitably encourage States to let national committees join more closely in preparing their periodic reports. Second, the Committee might emphasize the need to develop the role of United Nations advisory services and technical assistance in drafting periodic reports.

32. Mr. SONG Shuhua said that Mr. Banton's proposals were clear, specific and comprehensive. The question of criteria to assess the progress achieved in the struggle against racism deserved the Committee's full attention. The criteria were numerous and differed from country to country. An in-depth consideration of the matter might make a contribution to the work of the Preparatory Committee.

33. Mr. LAMPTEY said that there was no need to dwell on the subject of the Committee's contribution to the work of the Preparatory Committee for the World Conference on Human Rights. Mr. Banton, in his report, and Mr. Wolfrum and Mr. de Gouttes in their comments, had made a number of proposals and the Committee could immediately embark on selecting the most important. The Committee's representative, who still had to be chosen, could then bring them to the attention of the Preparatory Committee.

34. The CHAIRMAN said that, if Mr. Lamptey's proposal was adopted, it would speed up the Committee's work. He asked members whether they wished to confine themselves to the suggestions by Mr. Banton, make any changes in them, or opt for the solution proposed by Mr. Lamptey.

35. Mr. ABOUL-NASR said that, in his view, the Committee's representative to the Preparatory Committee for the World Conference should inform it of Mr. Banton's suggestions and all the other comments made by the members of the Committee.

36. The CHAIRMAN suggested he should hold consultations with Mr. Banton, Mr. Lamptey, Mr. Wolfrum, Mr. de Gouttes and Mr. Vidas to define clearly the proposals that could be submitted by the Committee to the Preparatory Committee for the World Conference.

It was so decided.

37. Mr. ABOUL-NASR proposed that the Chairman, Mr. Shahi, should represent the Committee in the Preparatory Committee for the World Conference.

It was so decided.

The meeting rose at 12.20 p.m.

CERD/C/SR.928
20 August 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 928th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Second Decade to Combat Racism and Racial Discrimination (continued)

World Conference on Human Rights

Programme of action for a third decade against racism and racial discrimination

The meeting was called to order at 3.20 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6) (continued)

World Conference on Human Rights

1. The CHAIRMAN invited the Committee to consider the recommendations it wished to make to the Preparatory Committee for the Conference in connection with paragraph 4 of the annex to resolution 1991/30 of the Commission on Human Rights. After consultations between members of the Committee and the Secretariat, the text of a preliminary list of points had been prepared and read as follows:

> "1. The experience of the Committee on the Elimination of Racial Discrimination with respect to the improvement of reporting procedures.
>
> "2. The participation of national human rights bodies in the reporting process.
>
> "3. Ways to attain universality of accession to the Convention.
>
> "4. The coordination of implementation of federal, national and local levels in complex political systems.
>
> "5. The Committee's experience regarding the use and non-use of procedures for responding to alleged violations of rights to freedom from discrimination.
>
> "6. The Committee's experience regarding the indivisibility of rights and the conflict of the right to freedom from discrimination and other human rights.
>
> Studies to be submitted as background material
>
> "7. Progress in combating racial discrimination since 1948, and the contribution of the Committee.
>
> "8. The contribution of social research to the implementation of human rights standards."

2. Mr. WOLFRUM, said he had two amendments to suggest to the document. Firstly, point 1 should be broadened to read "The assessment of the reporting system and means of improvement on the basis of the Committee's experience". Secondly, points 5 and 6 should be moved up to become points 2 and 3.

3. Mr. VIDAS expressed his satisfaction with the list as the Committee's contribution to the Preparatory Committee's work. The changes suggested by Mr. Wolfrum were acceptable.

4. Mr. LAMPTEY agreed. He suggested that the list should be incorporated in a Committee decision and transmitted to the Preparatory Committee for consideration.

5. Mr. ABOUL-NASR said he could not accept that proposal. He agreed with some points on the list, but not others. He had no quarrel with point 1, but was totally opposed to point 2. The Committee already had three complaints procedures at its disposal and was now threatening to introduce a fourth. It was difficult to see how national human rights bodies could be introduced into the process and he was dubious about the practical and financial arrangements. Point 3 also raised difficulties; unless the Committee felt confident of being able to indicate "ways to attain universality", the phrase was meaningless. The Committee already had an excellent human rights instrument at its disposal. Point 4 was acceptable, because the Committee had encountered the question in the cases of Canada and Australia. He found point 5, and to a lesser extent point 6, hard to understand in practical terms. With regard to the studies to be submitted as background material, he questioned the use of the phrase "social research", since he did not understand why research should be restricted to social matters.

6. The CHAIRMAN pointed out that the participation of national human rights bodies, mentioned in point 2, had been provided for in resolution 1991/30 or the Commission on Human Rights.

7. Mr. LAMPTEY said that the merit of incorporating the list in a decision was that all human rights bodies, such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, were following a similar procedure. Moreover, it would represent the Committee's views and impose no obligation on the Preparatory Committee. Point 3, had been included in the programmes of action for the First as well as the Second Decade. By calling for universality, the Committee was simply seeking to determine why, for example, the United States had not signed the Convention or why other countries had not ratified it.

8. Mr. de GOUTTES, referring to point 2, said that, where they existed and despite variations in quality, national human rights bodies made useful contributions to the reports of States. It would be possible to give the point less emphasis by combining it with point 1, but his own preference was for the wording as it stood.

9. Mr. BANTON pointed out that the wording of point 6 had come from paragraph 2 of the annex to the resolution of the Commission on Human Rights, but he was quite prepared to see it amended.

10. The CHAIRMAN, speaking in his personal capacity, pointed out that the word "national" in point 4 was ambiguous and suggested that it should be replaced by the words "State/provincial".

11. Mr. ABOUL-NASR said that his position with regard to the list remained unchanged. If there was a consensus in the Committee, however, he would not stand in its way.

12. Mr. RESHETOV said, with regard to point 6, that indivisibility of rights and the conflict of the right to freedom from discrimination were separate topics and should not be considered under a single point. He, too, thought the word "social" in point 8, was too restrictive.

13. Mr. BANTON, referring to the use of the word "social", said that the most significant development in human rights legislation in the United Kingdom, had been the inclusion in the Race Relations Act of 1968 of employment, housing and education as areas in which racial discrimination existed. The inclusion of those areas had been due to research undertaken on the joint initiative of the Home Secretary and the Chairman of the Race Relations Board, which had revealed that there was more discrimination than the racial minorities themselves realized. It had been a crucial factor in influencing public opinion and had enabled the legislation to go through Parliament smoothly. Social research was also necessary in determining whether legislation was effective.

14. The CHAIRMAN proposed that the list should be adopted with the amendments suggested by members of the Committee.

It was so decided.

Programme of action for a third decade against racism and racial discrimination

15. Mr. BANTON, introducing his paper on a programme of action for a third decade, said that it had been prepared in response to the request made by the Committee at its thirty-ninth session in March 1991. His own personal views were contained in the annexes. He considered annex 3 the most important. The Centre for Human Rights had made good progress in developing its publications activities, but there was room for improvement. He also drew the Committee's attention to annex 4, paragraph 6, in which he expressed the view that racial discrimination was a crime rather than a sickness, and to paragraph 8, in which he differentiated between racial and political discrimination.

16. Mr. LAMPTEY said that in the main Mr. Banton's paper did not give rise to problems, but that he took issue with the suggestion on page 2 that international action could be improved if the Committee were to be authorized to report on protection against racial discrimination in all States Members of the United Nations, and he proposed that the relevant sentence should be deleted. The point was that the Committee could not be authorized to report on States members which were not parties to the Convention. The United States, for example, had not ratified the Convention, although it had played an important role in its preparation. It was unlikely that States which were not parties would willingly submit to such reporting.

17. Mr. BANTON said that his aim in submitting the memorandum had been to put forward some ideas for activities which might be useful in the context of a third decade. In doing so, he had taken into account the suggestions made by the Under-Secretary-General for Human Rights at the Committee's previous session. He did not intend his suggestions to be provocative, and would be happy to withdraw any that did not meet with general acceptance.

18. Mr. WOLFRUM proposed that the sentence immediately preceding the one referred to by Mr. Lamptey should be amended so that it more clearly reflected the Committee's recent decision regarding its permissible sources of information.

19. Mr. ABOUL-NASR said that he found the memorandum very useful, and that the Committee could evaluate its merits when the time came to decide on the programme of action for a third decade. Any assessment during the current discussion would inevitably be of a preliminary nature.

20. Mr. de GOUTTES wondered whether the intention in the first sentence of the third paragraph on page 3 of the memorandum, which stated that the "suggestion in paragraph 15 that CERD might establish ongoing relationships with national organs or institutes working against racial discrimination in order the better to understand possible steps forward, provoked thought" was that direct relations should be established between the Committee and national bodies. If so, it should be made clear that such contacts would be established through the normal channels of communication with the authorities of the States parties concerned. The word "premature" in the following sentence could be regarded as too forceful, and he suggested that the sentence could be amended to read "It would be necessary to give prior consideration to this suggestion". Similarly, the penultimate sentence could perhaps read: "The suggestion in the latter part of paragraph 15 that other, unofficial, representatives be included in government delegations also requires prior examination."

21. Mrs. SADIQ ALI said that she agreed with Mr. Wolfrum regarding the reference to the Committee's permissible sources of information.

22. She also drew the Committee's attention to the absence of any mention of possible research into the cultural identity of migrants.

23. Mr. ABOUL-NASR said that the paragraph to which Mr. de Gouttes had referred raised more issues than it resolved, and that it might be best to delete it.

24. Mr. SHERIFIS said that the Committee might ask Mr. Banton to revise his memorandum, which represented a valuable contribution, so that the Committee could go through it at a later stage paragraph by paragraph.

25. Mr. BANTON said that it might be useful to have a statement from the representative of the Secretary-General on the planning process for a third decade. With regard to annex 3, Publications, the members of the Committee should decide whether they would be willing to take part in preparing the documentation for the Decade. In respect of annex 4, General conclusions on racism and racial discrimination, he wondered whether it might provide a useful basis for discussion in the forthcoming meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

26. Mr. ABOUL-NASR said that he had misgivings regarding the title and content of annex 3. The means of communication with the victims of racial discrimination, many of whom were illiterate, could not be confined to "publications", even if such academic activities were worthwhile in themselves. "Studies, publications and dissemination" might be a more appropriate title. At the same time it would be useful to commission further translations of existing publications into widely-spoken languages which were not working languages of the United Nations, but the primary emphasis should be placed on videotaped material, television and radio in order to reach the widest possible audience.

27. The CHAIRMAN said he took it that the Committee wished its discussions with the Sub-Commission to cover Mr. Banton's general conclusions on racism and racial discrimination in annex 4 of his paper.

28. Mr. SONG Shuhua said that Mr. Banton had produced a good report that would be useful for a third decade against racism and racial discrimination and, indeed, in other human rights areas. As that report was not a Committee document, it need not be considered paragraph by paragraph.

29. Mr. AHMADU said that Mr. Banton had produced an excellent paper. In his view, the Committee should either examine it paragraph by paragraph and then adopt it, or it should treat it as a valuable addition to its documentation and simply make minor amendments. He agreed with Mr. Aboul-Nasr's suggestion regarding the title of annex 3, since, in his country, 70 to 80 per cent of the population was illiterate.

30. Mrs. SADIQ ALI recalled that, according to the Committee's report in 1984, most members had reiterated that a study on the scope and implementation of article 5 (e) in conjunction with article 1, paragraph 4, and article 2, paragraph 2, of the Convention should be prepared. The study would concentrate on minorities, indigenous populations and other vulnerable groups. The Committee had agreed that the modalities for conducting such a study could be discussed at its next session. She asked whether Mr. Banton would consider that issue.

31. Mr. SHERIFIS said he had no objection to the proposed amendment to the title of annex 3 and was in favour of studies relating to the Convention. He added that the Information Service could and should play a greater role in disseminating information on the Convention. He agreed with previous speakers that there should be ways of providing information in a more understandable form, whether through radio, short stories, video or movies, to those who could not read.

32. Referring to the question of financial implications, he said that if resources were available, he would support all such studies, as well as video and radio programmes for populations that were illiterate and the translation of information on the Convention into as many languages as possible.

33. Mr. de GOUTTES agreed with Mr. Aboul-Nasr, Mr. Banton and Mr. Sherifis on the importance of ensuring that information on the Convention reached the persons concerned. With regard to annex 2, which was of vital importance, the reference to criminal justice in paragraph 2 should be expanded to give, as an indicator, examples of offences typical of poor social integration, such as alcoholism, drug abuse, disregard for administrative rules and regulations, non-payment of fines, etc., behaviour that had been noted in certain disadvantaged minority groups.

34. Mr. GARVALOV, referring to annex 3, said that he was in favour of studies of the way States implemented the Convention, but thought it was too late, in a third decade, to embark on studies elaborating standards to eradicate racial discrimination. Such studies should aim to help States implement their obligations under the Convention and to encourage those States that had not already done so to accede to that instrument. If, however, it was a question of reaching populations, the studies would not attain their goal, inasmuch as

they would be intended primarily for use by Governments and experts. Another way must be found to acquaint illiterate persons with their rights.

35. The CHAIRMAN, summing up the discussion, said that a number of suggested amendments had been accepted by Mr. Banton, in particular, the proposal by Mr. Lamptey for a deletion on page 2 and certain amendments to the third paragraph on page 3. Comments had been made on the indicators referred to in annex 2. The Committee did not object to amending the title of annex 3 to read "Studies, publications and dissemination" and was in favour of including in its discussion with the Sub-Commission the general conclusions on racism and racial discrimination in annex 4. Mr. Banton would prepare a revised version of his paper for the Committee's next session.

36. Mr. SHERIFIS asked Mr. Banton to consider in his revised version of annex 3 the advisability of a study on racial discrimination in relation to armed conflicts or as a result and/or cause of armed conflicts, an issue that had taken on increasing importance in Europe, Africa and elsewhere.

37. Mr. HOUSHMAND (Representative of the Secretary-General) expressed appreciation of Mr. Banton's paper, which showed that the Committee was two or three years ahead of the United Nations in its thinking on a third decade. The only recommendations on a possible third decade against racism were those emanating from the Sub-Commission in 1990 and subsequently endorsed by the Commission on Human Rights, which had recommended that the General Assembly should take appropriate steps in due course to launch a third decade, beginning in 1993. As the General Assembly had not yet considered that recommendation, consideration of the financial implications was premature. As he understood it, a second version of Mr. Banton's paper would be discussed in 1992 before the Committee made its final recommendations in its report to the Assembly. Clearly, some of the activities proposed in the annex could easily be undertaken with the resources available under the publication programme of the Centre for Human Rights: that programme had been greatly expanded and would be able to carry out many of the recommendations relating to the preparation of studies. The actual preparation would be undertaken in consultation with those of its members that the Committee itself had designated. He was certain that recommendations relating to a third decade would also come from the Sub-Commission and the Commission on Human Rights, and the General Assembly would take them all into consideration before a final programme was drafted.

The meeting rose at 5.15 p.m.

CERD/C/SR.929
2 December 1991

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 929th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 August 1991, at 10 a.m.

Chairman: Mr. VIDAS

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Fifth and sixth periodic reports of Israel

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)*

In the absence of the Chairman, Mr. Vidas took the Chair.

Fifth and sixth periodic reports of Israel (CERD/C/192/Add.2)

1. The CHAIRMAN invited the Committee to consider the fifth and sixth periodic reports of Israel (CERD/C/192/Add.2), and announced that the State party would be represented by a delegation composed of Mr. Robbie Sabel, Ambassador and Legal Adviser in the Ministry of Foreign Affairs, and Mr. Alexander Bligh, Adviser to the Prime Minister on Arab Affairs.

At the invitation of the Chairman, Mr. Sabel and Mr. Bligh (Israel) took seats at the Committee table.

2. Mr. SABEL (Israel) said that his country's first report had already described the legal and sociological bases of Israeli society. It had shown that it was a traditionally pluralistic society: throughout its history and the diaspora, the Jewish people had welcomed converts of very different races and colours. In fact, pluralism was one of the greatest assets of Israeli society. Striking evidence of that fact had been provided recently during the Gulf war, when all citizens had benefited from the measures taken to protect the Israeli population against Iraqi attacks (in particular, the distribution of masks against chemical weapons), and everyone had complied with them. The radio had given information on how they should be used and on the precautions to be taken, in six different languages. The war had also demonstrated that the Arab citizens of Israel, who accounted for 16 per cent of the population and were fully-fledged citizens enjoying equality before the law, had not responded to Iraq's appeals, inspired by fundamentalism, for the destruction of Israel.

3. The fifth and sixth periodic reports described a series of programmes benefiting minorities. As they had been submitted in May, they had not included any reference to the arrival in Israel of 14,500 Ethiopian Jews on 24 and 25 August. Twenty thousand Ethiopian Jews had already come to the country over the previous decade. "Operation Solomon", under which they had been brought to Israel, had been well received by the people, who had warmly welcomed the new arrivals. Mention should also be made of the arrival of hundreds of thousands of Soviet Jews in recent years; there had been another 90,000 in the first six months of 1991. The intake of Ethiopian and Soviet Jews, unprecedented in the world, was evidence, in terms of its scale and the lack of subsequent racial tension, that there was no xenophobia or racism in Israel.

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* Resumed from the 926th meeting.

4. The fourth periodic report of Israel (CERD/C/144/Add.2) had described Israel's legislation against racial discrimination, which had recently been supplemented by a Penal Law amendment making it a criminal offence to publish and possess written material involving incitement to racism. In Israel, the independence of the judiciary was conducive to the protection of human rights and the fight against racial discrimination. In that connection, he quoted a Supreme Court decision stating that the fundamental doctrine of human rights set forth in the Universal Declaration of Human Rights of 1948 and the two International Covenants of 1966 constituted a heritage common to all enlightened people (vol. 20 of Supreme Court judgements, p. 333). Lastly, he quoted David Ben-Gurion, the former President of Israel, as saying "In the long run nations will be judged by how they treat minorities: Israel will be judged by how it treats its minorities".

5. Mr. BLIGH (Israel) gave statistics on the composition of the Israeli population. At the end of 1990, there had been 880,000 non-Jews in the country, of whom some 680,000 had been Muslims (including 110,000 Bedouins), 115,000 Christians, 83,000 Druze and 3,000 Circassians.

6. He might describe himself as a kind of affirmative action commissioner; his office was responsible for developing detailed programmes for minorities. The programmes had the following aims: to diagnose acute problems, take measures to close the gaps in infrastructure and strengthen the identification of non-Jews with the State of Israel. He gave details of some programmes in which his office had been involved. One of them concerned villages which for historical reasons were not officially recognized and for that reason could not receive subsidies; the purpose of the programme was to allocate budgets to them by setting up local councils, by annexing them to other councils, or again by annexing them to mixed Jewish and Arab villages. His office had also drawn up a pluriannual programme for Arab villages, with a budget equivalent to US$ 100 million. In the previous two years, $75 million had been or would be allocated under that special budget to the Arab sectors of Israel. Another programme, spread over five years and also with a budget allocation of $100 million, was aimed at improving education in the Arab sectors with the building of 855 classrooms. He also mentioned a university scholarship programme for Arab students and a special course at the University of Beersheba designed to preserve the heritage of the Bedouins and enable them to obtain university degrees. His office had also been involved in the establishment of two Muslim colleges to train religious leaders.

7. In the health sphere, 135 clinics had been opened in 107 Arab towns and villages; today, between 85 and 90 per cent of pregnant Arab women could be treated in those clinics. Still in connection with the health sector, it was significant that 152 Arab doctors were now working in non-Arab sectors (as against 26 in 1979); the same applied to 38 chemists (there had been none at all in 1979). The trend would be confirmed with the arrival of new graduates.

8. It was also interesting to note that five Arabs, including one Druze, had seats in the Knesset. The part played by those members of the Knesset was reflected in the fact that, out of 196 parliamentary questions they had raised, 142 had received a reply; 115 questions asked in the Knesset had all been debated. He further referred to the efforts made to ensure that, despite the difficulties raised by the Gulf war, Israeli Muslims had been able to make the pilgrimage to Mecca and Medina in 1991. Saudi Arabia had initially

announced that they would not be allowed to do so. In the end, 1,500 Israeli Muslims had been to Mecca and Medina; that was far fewer than in previous years, when there had been an average of 6,000 - with a maximum of 10,000 - but the fact that there had been no interruption in the pilgrimage was a major achievement. Another matter to report in that connection was that his office, together with other agencies, was in the process of drafting a law for the satisfactory organization of all Muslim religious services.

9. Lastly, he reported that in the past three months his office, which was responsible for advising the Prime Minister on Arab affairs, had recruited four Arabs, including three Muslims and one Christian, out of a staff of 14.

10. The CHAIRMAN thanked the representatives of Israel for the presentation of the fifth and sixth periodic reports (CERD/C/192/Add.2), and for the additional information they had just given orally.

11. Mr. YUTZIS Country Rapporteur, thanked the Israeli delegation for attending the session and thus consolidating the dialogue. The delegation was composed of persons responsible for matters closely connected with the Convention. He drew a distinction between the universal character of the issues with which the Committee was concerned and the specific nature of the social and historical situations it had to deal with, analysing them empirically. That distinction was particularly important in the case of Israel. The huge contribution made by the culture of Israel throughout its history must be recognized. That contribution could be seen in many cultures of the present day, even in spheres in which its influence was not consciously felt. As a theologian, he drew attention to the influence of the God of the Old Testament, a God seen as real and present (Jehovah, "He who is"), on the cultures of many peoples, even remote ones. Moreover, in the course of history the people of Israel had experienced a long exodus, during which it had often been treated as a scapegoat. That still needed saying today, when attempts were being made in some quarters to deny the historical truth of such painful ordeals. Israel, whose reports were being considered by the Committee, was now a people which had built a nation, deserving, like any other, to live in peace and security.

12. Going on to assess the fifth and sixth periodic reports (CERD/C/192/Add.2), he was gratified to note that they contained new information; the oral statements had also provided further details. Something that had not been said - and should be - was that there was a national Civil Rights Commission in Israel which concerned itself with human rights. Another point to make was that the Committee must take account of all persons coming under the jurisdiction of the State of Israel in examining Israel's reports. It could not exclude certain sectors of the population from its examination, as certain States were apt to do, thus limiting their responsibility. Although in its work the Committee should not go into geopolitical conflicts falling outside its mandate, it could hardly escape the fact that some issues coming within its mandate were political in scope.

13. Looking at the fifth and sixth periodic reports in detail, he noted that there were some inconsistencies with the Committee's guidelines. First of all, the demographic statistics given raised what might be termed an epistemological problem. There was some ambiguity in the data between religious and ethnic criteria. He referred in that connection to the

information contained in the third periodic report of Israel (CERD/C/113/Add.2) to the effect that, in practice, private individuals could use Hebrew, Arabic and English in their dealings with the administration, and government officials could reply in any of those languages (para. 19), while the Shari'a courts (Muslim courts), which were competent to deal with personal matters, used Arabic. There, too, there was some ambiguity: was it to be presumed that all Muslims were Arabs and all Arabs, Muslims?

14. That concern prompted him to ask what was meant by "minority groups in Israel" in paragraph 15 of the report (CERD/C/192/Add.2). Were they religious, ethnic or linguistic groups? In paragraph 24 as well, the term "minority populations" required clarification. In general terms, the Committee needed clear statistical data to be able to form an opinion. It also needed more precise information on certain characteristics of those minorities, particularly their employment and income levels. He had noted in that connection that one of the representatives of Israel had referred to major projects and substantial funds available to Arabs.

15. Some information had been given on the participation of minorities in political life, but details were also needed on their participation in the administration. Continuing with his analysis of the report, he noted that in paragraph 15 reference was made to "villages" and "settlements" benefiting from measures taken for minority groups in accordance with a decision adopted by the Israeli Government on 21 April 1987; it would be useful to know which were the villages and settlements concerned. In the same vein, reference was made in paragraph 18 to programmes aimed at improving the physical infrastructure of "Arab communities", but paragraph 19 mentioned only one town, Um-El-Fahm. The information given on the representation of minorities in medical professions might usefully be supplemented by data on the paramedical professions or "auxiliary medical staff", such as nurses, physiotherapists and others.

16. He would like to know what percentage of the population reached the various levels of education, particularly university level, and would appreciate information on the number, location and functioning of multiracial, multi-ethnic or multilingual schools. Paragraph 22 of the report submitted by Israel gave the impression that certain university studies were reserved for young people who had completed their military service; further information was needed on that subject. According to the same paragraph, military service was not compulsory for certain non-Jewish citizens (Druze and Circassian citizens), which made him wonder which citizens were required to do military service. He pointed out that, according to Amnesty International's latest report, dozens of Druze or Jewish Israelis had been imprisoned for refusing to do their military service on grounds of conscientious objection; that was in contradiction with the information contained in the report and required explanation.

17. With regard to the Penal Law provisions aimed at eliminating racial discrimination, he noted in paragraph 11 of the report that any person making a statement or committing an act constituting an incitement to racism could be charged and tried. While recognizing the importance of such a provision, he observed that none of the reports had referred clearly to the implementation of article 4 of the Convention. It would also be useful to have figures on

complaints filed concerning acts of racial discrimination, and, if there had been none, it would be interesting to know why.

18. On the subject of the Temple Mount Faithful case and the case concerning Mr. Kahane, he wondered whether they were isolated cases or whether they had social origins.

19. With regard to the implementation of article 5 of the Convention, he would like to know whether the right to work was recognized in Israel and whether it was true that, after the Gulf war, the number of vacancies for the Arab population had declined. According to a report drawn up by the Lutheran World Federation in 1991, certain private vehicles with a blue number-plate had been banned from Jerusalem and very few work permits had been issued. He would like details on that subject and on the "labour exchange" system whereby persons who had come to work in Israel and subsequently lost their jobs were entitled to compensation.

20. He would also like to know more about the status of Jews from the Soviet Union. Were they regarded as immigrants or refugees? He was aware of the fact that, in order to emigrate to Israel, such persons were required to follow a predetermined route, that they did not have passports and that, on arrival in Israel, they had to sign a document in which they undertook to reimburse the travel and other expenses and which subsequently served as an identity document. According to information in his possession, immigrants between the ages of 18 and 45 were required to complete their military service and those who were not orthodox Jews had to complete a three-year period of service. He wished to know whether that was true and, if so, whether it did not constitute discriminatory treatment. And lastly, he inquired where Jews from the Soviet Union lived and whether there were any transit camps.

21. Turning to the implementation of the provisions of the Convention in the territories under Israel's control, he asked about the living conditions of the population of those regions and whether it was true that the authorities resorted to indiscriminate force. In what way was personal safety guaranteed in those territories? What were the legal provisions in force? Were the acts reported by various organizations legitimized in any way, either consciously or unconsciously? Referring to the report of the Lutheran World Federation that four citizens had been expelled from the Gaza Strip on 23 April 1991, he asked what procedure had been applied, which courts had handed down the decisions, whether the persons concerned had been able to appeal and which authority was responsible for ensuring that the decisions handed down were put into effect. He also wished to know what was meant by "administrative detention". With regard to the administration of justice as such, the legal adviser to the Association for Civil Rights in Israel considered illegal prolonged detention based on presumption, with no obligation for the defence to be informed, and expressed his concern on the subject of arrests about which no information was available.

22. On the subject of the right to housing in the territories under Israeli control, he wished to know the reasons for the demolition of homes reported by Amnesty International. As to the economic situation of the occupied territories, especially with regard to employment, it was critical. There were reported to be over 75,000 unemployed in the Gaza Strip and workers had allegedly been dismissed without compensation. The economic situation

inevitably affected the right to health. Nearly 50 per cent of children living in the territories under Israeli control were reported to be suffering from anaemia and malnutrition. In those territories, the expenses covered by sickness insurance were reported to have declined by 15 per cent, and between 30 and 40 per cent of Arab patients were unable to pay for the treatment prescribed. The report of the Lutheran World Federation also described the difficulties of the population of the Gaza Strip in receiving medical care.

23. If the Israeli delegation was unable to reply orally to all his questions, it was very important that the next report should include the information requested because until the Committee had such information in its possession, it would be unable to say whether Israel was complying with its obligations under the Convention.

24. Mr. LECHUGA HEVIA thanked Mr. Yutzis for his very detailed and comprehensive report. He welcomed the presence of the Israeli delegation, but did not consider the report submitted by Israel to be satisfactory since it contained no information on the implementation of the Convention in the occupied Arab territories. In accordance with article 3 of the Convention, States parties were required to provide information on all territories under their jurisdiction.

25. On the subject of relations between Israel and South Africa, he observed that Israel had maintained economic relations and, what was even more serious, military relations with South Africa. Referring to paragraph 31 (c) of the report, he wondered whether the decision to refrain from any new common undertakings with South Africa in the realm of defence implied that previous contracts were still in force.

26. Mr. de GOUTTES considered that Mr. Yutzis had been quite right to emphasize the complexity of the situation in Israel in his report. He thanked the Israeli Government for submitting a report on time and for having sent a delegation. That being said, he deplored the tone of paragraphs 3 to 5 of the report, which gave the impression that Israel's behaviour in the fight against racial or ethnic discrimination, towards the Arab population in particular, was irreproachable. The Committee had always rejected hackneyed statements to the effect that there was no racial discrimination in a country, and that went for Israel as well.

27. Seeking to clarify the Committee's position, he pointed out that the members of the Committee had decided to question the Israeli delegation on Israel's compliance with the Convention in all the territories under its control, including the occupied territories, since article 3 of the Convention committed States parties to preventing, prohibiting and eradicating all discriminatory practices in all territories under their jurisdiction. He wished to make it clear that the Committee's consideration of the situation in those territories had no implications in terms of recognition of the occupation of those territories. That being said, he would appreciate explanations concerning the detailed information contained in the "Country Report on Human Rights Practices 1990", which had been published in February 1991 by the foreign affairs commissions of the United States Senate and House of Representatives and referred to numerous discriminatory acts and human rights violations allegedly suffered by the Palestinians living in the

occupied territories, in the context of the intifada. That information was in fact corroborated by Amnesty International in its latest report.

28. Mr. WOLFRUM said that the composition of the Israeli delegation was evidence of the Israeli Government's willingness to engage in a constructive dialogue with the Committee.

29. He thanked Mr. Yutzis for his excellent analysis of Israel's report, and fully associated himself with the views expressed by Mr. de Gouttes on Israel's obligation to report also on all territories under its jurisdiction.

30. Since 1967, the inhabitants of the territories administered by Israel had been authorized to lodge complaints against the State and the military authorities with the High Court of Justice. Subsequently, Lebanese citizens living in the part of southern Lebanon administered by Israel had been granted the same right. Had the High Court received any complaints of racial discrimination? To what extent had that court been able to restrict the scope of the clause relating to military secrets or national defence, as it had previously done in the Rafah Approach case (1972) and the Eilon Moreh case (1979)?

31. It was stated in paragraph 44 of the report that the Basic Law on the Knesset had been amended to prevent a candidate advocating racism from standing for election to the Knesset. Had that new provision ever been invoked before the courts? Again according to paragraph 44, the amendment was said to be the consequence of the election of Mr. Meir Kahane. It so happened that he, the speaker, had read in the Israel Yearbook that the amendment was due to a decision by the Supreme Court annulling the order banning one or two Arab political parties from putting up candidates for election. What exactly was the situation?

32. The next report should deal with the question of education in greater depth. In that connection, was it true, as paragraph 9 seemed to suggest, that educational establishments in a given region were financed by taxes collected in that region? If that were the case, were the poorer regions educationally disadvantaged as compared with the richer ones? Might that not be a source of discrimination?

33. Were measures being taken to improve the level of education of groups with problems in that respect?

34. The representative of Israel had spoken of special education for the Muslim population and nomads. Did that mean that the Government was not seeking to integrate Arab students into society? What was the percentage of non-Jews among students and teachers in universities?

35. Was it true that in the territories administered by Israel there were more expropriations of non-Jewish property than Jewish property?

36. He concluded by expressing the hope that in its next report the Israeli Government would give the Committee detailed information on the implementation of the Convention in the territories under its administration.

37. Mrs. SADIQ ALI welcomed the dialogue which had been established between Israel and the Committee, and thanked Mr. Yutzis for his very comprehensive report.

38. She associated herself with the views expressed by Mr. Wolfrum and with Mr. de Gouttes' comments on the occupied territories. She also agreed with what Mr. Lechuga Hevia had said about relations between Israel and South Africa, particularly with regard to defence.

39. She would like to know which were the six languages in which the safety instructions had been given at the time of the Gulf war and whether they were the only languages recognized in Israel.

40. The representative of Israel had said that Jews from the USSR had received work, housing and health care. He had said nothing about such benefits for Ethiopian Jews. Were they in transit camps or were they already settled? If so, where?

41. With reference to article 7 and article 2 (1) (e) of the Convention, she asked what measures were being taken to foster exchanges between Jewish and Muslim Israelis, since it appeared that contacts between the two communities were somewhat limited.

42. It was stated in paragraph 22 that the State provided benefits to young people wishing to pursue university studies and that those benefits, in particular loans and grants, were linked to military service. For security reasons, the Arabs were at a disadvantage in that regard. Would it be possible to adopt a more equitable system?

43. Mr. RESHETOV commended the competence of the Israeli delegation, and stressed the importance of the contribution made by the Jewish people to the development of civilizations and world culture. He also spoke of the indignation aroused in everyone by the injustices suffered by the Jewish people in the course of history.

44. The Union of Soviet Socialist Republics (USSR) had a special relationship with Israel because many Israelis were of Soviet origin.

45. In that connection, the 1967 decree which had provided that any Soviet citizen of the Jewish religion emigrating to Israel *ipso facto* lost his or her Soviet nationality had been repealed; the Soviet Union now recognized dual nationality.

46. In response to the representative of Israel's statement that if Jews immigrated to Israel, it was because it was difficult to live in their country of origin and that they were subjected to racial discrimination there, he pointed out that the Soviet Union now genuinely enforced the laws prohibiting incitement to racial hatred and, particularly, manifestations of anti-Semitism. Soviet Jews could freely practise their religion and engage in cultural activities.

47. The Committee was sceptical of statements to the effect that there was no racial discrimination in a particular country. He doubted, for instance, that

Israeli society was multiracial, democratic and pluralistic, as stated in paragraph 36 of the report.

48. He was pleased to note that the number of Arab students enrolled in universities had increased more than fivefold since 1971 (para. 49) and that some political parties had amended their constitutions in order to ensure the representation of members of Israel's minorities (para. 50). He wished to ask the Israeli delegation a few simple, specific questions, to which he would like clear answers.

49. Had there ever been a member of an Israeli Government who was not a practising or believing Jew?

50. Had representatives of national minorities ever had a seat in the Knesset? Were there any members of national minorities among high-ranking army officers and in the senior ranks of the Israeli police force?

51. Could believers practise their religion on an equal footing within the army?

52. In the USSR, there were many Jewish teachers in higher education. Were there any Muslims teaching in universities in Israel?

53. Were there mixed trade unions whose membership comprised both Jews and Muslims?

54. He would like to know what the requirements were for immigration into Israel. In that connection he quoted the example of a couple who had been on the point of emigrating to Israel. The husband, who had been Jewish, had suddenly died, and his wife, who was not Jewish, had found herself in a difficult situation. It appeared that the rights she could have claimed on arrival in Israel were denied her following the death of her husband. He wished to know what part blood relationship played in immigration.

55. In what way could Muslim Israeli citizens going on a pilgrimage to Saudi Arabia threaten the security of Israel? It did not seem that the 100,000 or so Soviet citizens who had gone to Poland recently to attend a mass celebrated by the Pope constituted a threat to the security of the USSR.

56. Finally, he would appreciate a full version of the judgement recently handed down by the Supreme Court which was partly reproduced in paragraph 27 of the report.

57. Mr. FERRERO COSTA thanked the Israeli delegation for pursuing its dialogue with the Committee, and Mr. Yutzis for his detailed analysis of Israel's report. In that connection, he hoped that the next report of the Israeli Government would be consistent with the revised guidelines and the consolidated guidelines drawn up by the Committee.

58. The next report should also contain more detailed information on the demographic composition of the population, especially on the various ethnic groups which did not always coincide with religious groups.

59. He, too, drew attention to a serious omission from the report, i.e. the lack of information on the population of the occupied territories. It was particularly regrettable since, according to reliable sources (the reports of Amnesty International and the United States Senate), serious human rights violations were being committed there.

60. The Committee would also like to know whether Israel applied the provisions of the Fourth Geneva Convention to the population of the occupied territories.

61. Lastly, the Committee wished to have more detailed information on the implementation of article 5 of the Convention, particularly paragraphs (d) and (e) relating to various economic, social and civil rights, especially as it affected minority groups, whether within the territory of Israel or in the occupied territories.

62. Mr. ABOUL-NASR expressed disappointment with the report of Israel and the oral statements by the representatives of the State party, which painted an idyllic picture of the situation concerning racial discrimination in Israel. In fact, everyone was aware of the country's serious problems in that regard. Israel was certainly a multiracial and pluralistic society, but, depending on their race, the various populations did not enjoy the same rights in that self-proclaimed Jewish State.

63. Israel reported on the progress made in education. What, then, was the situation regarding the closing of universities in the occupied territories, as reported in detail by the United Nations Educational, Scientific and Cultural Organization (UNESCO)?

64. With regard to health, Israel stated that some progress had been made since 1967. All countries had progressed in the field of health since then, but the problems which persisted in Israel reflected the fact that people were treated differently according to their race.

65. The interest shown by Israel in those who were denied the right to go on the pilgrimage to Mecca was praiseworthy. It was to be hoped that it would be equally sensitive to the situation of those who were prevented from going to the Al-Aqsa Mosque, the second holy place of Islam, renamed the Temple Mount. Israel might also usefully take an interest in the fate of those who wished to return to their homes and, like the Israelis, exercise their right to have a nation and to live in a land of their own. He saw no reason other than racism to explain the fact that an Arab, whether Muslim or Christian, should be denied the right to return home, whereas considerable efforts were made to settle Ethiopian and Russian Jews who had never set foot in Israel. Could it not be said that to grant Israeli citizenship automatically to any Jew settling in Israel, while denying Arabs the right to return there, amounted to a legalization of discrimination?

66. Ben-Gurion's statement that nations should be judged on the way they treat their minorities was quite right. It might also be recalled that Ben-Gurion had described some of Israel's present leaders in well-known terms. Had not some ministers now in office - as well as a former Israeli Prime Minister, Mr. Begin - been terrorists? It was true that measures had been taken in response to Meir Kahane's activities, but he asked what

difference there was between what that Member of Parliament stood for and the policy advocated by certain current Israeli ministers, namely, the destruction of Arab homes, the establishments of settlements in the occupied territories, the expulsion of Arabs and the establishment of a single-race Jewish State.

67. In conclusion, he believed that in that region of the world, to which his country belonged, nations could coexist peacefully provided they recognized that others were entitled to the rights they bestowed upon themselves.

68. Mr. BANTON said that he would have liked to have demographic data comprising a breakdown by race, colour and national and ethnic origin in Israel. It would have been far more useful if the table given in paragraph 5 of the report had indicated not only the religion of the population, but also the place of birth, which would have shown national and ethnic origin.

69. Like Mr. Wolfrum, he had noted with interest the decisions of the Israeli courts. As to the expression "[distinction] based on race" (para. 6), which was actually taken from the text of the Convention, he asked how it was interpreted in Israeli law and whether Israeli courts had ever distinguished between racial and political grounds. Drawing a parallel between the situation in Israel and the situation in Northern Ireland, he said that in certain areas controlled by Israel there was a political conflict in which the parties were identified by religion, but also by their ethnic origin. It might happen, therefore, that Israeli courts had to determine whether the grounds for discriminatory treatment were race, political opinion or, as Mr. Wolfrum had mentioned, military necessity. Decisions of that kind were of great interest to the Committee because they enabled it to understand how human rights legislation was drawn up in different parts of the world.

70. Regarding the implementation of article 2 of the Convention, he asked how the Israeli Government supervised its policy for the elimination of racial discrimination. The comparative figures given in paragraph 20 concerning average life expectancy and infant mortality were useful both to the Committee and to the Israeli Government. The same paragraph stated that efforts had been made "to reduce pre-existing gaps between various sectors of the population". A distinction should be drawn in that connection between the Israeli population and the population under Israel's control.

71. In connection with the implementation of article 2 (1) (e) of the Convention, under which "each State Party undertakes to encourage ... integrationist multiracial organizations", the report mentioned only the Association for Civil Rights in Israel (para. 47). Could the representatives of Israel give any further information on that subject?

72. He, too, considered that the information given on the implementation of article 5, paragraphs (a) to (c), was inadequate, but was pleased to note that in their oral statements the representatives of Israel had reported some progress in equal access to public service.

73. With regard to the implementation of article 5 (d), was the exercise of the civil rights set forth therein guaranteed without discrimination? In that connection, he asked whether it was true that Arab land had been taken to build roads serving Jewish settlements; whether the water allocation for Palestinian agriculture or domestic consumption was less than the allowance

for the Jewish population; and whether, unlike Palestinian farmers, Israeli farmers were cushioned against recession by substantial subsidies. Article 5 referred to "the right of everyone", a term which covered the rights of all persons working in Israel, even if they were resident in the occupied territories. How were the economic rights of those workers protected? What wage levels could they expect as compared with the Israeli population? Could they join trade unions?

74. He would like confirmation that Israeli law prohibited discrimination by private individuals and, when it occurred, that action was taken against persons committing discriminatory acts.

75. Paragraph 9 of the report stated that "taxes collected by local authorities are spent only on services enjoyed by residents". Which services were financed by those local taxes, bearing in mind, in particular, the provisions of article 5 (e) (v) concerning the right to education?

76. Noting that reference was made in paragraph 49 of the report to the "relative weakness of the Arab educational system", he asked to what extent that educational system was separate from the Jewish system; whether there were any integrated schools; whether any figures were available on comparative class sizes in Arab and Jewish schools; and what was the expenditure per Arab pupil and per Jewish pupil.

77. Recalling that Mr. Wolfrum had drawn Committee members' attention to the fact that measures which were not intentionally discriminatory might be discriminatory in effect, he asked, with reference to the provisions of article 6, how Israel ensured "effective protection and remedies".

78. Lastly, referring to the statement by Mr. Aboul Nasr, who had spoken of a "Jewish State" apropos of Israel, he hoped that the representatives of Israel would point out in their reply that that term was incorrect, since he understood that the Israeli authorities had recently spoken of Israel as "the State of the Jews" and not "the Jewish State".

79. Mr. AHMADU agreed with Mr. Banton that some points in Israel's report were not entirely satisfactory; however, he welcomed part B of the document as it was the first time that the State of Israel was taking concrete measures against apartheid. Noting that the Israeli Government had stated, in paragraph 37 of its report, that it had "severed all cultural ties with South African organizations connected in any way with the apartheid regime", he asked whether cultural links with the South African Government had remained intact and whether there was still any military cooperation between Israel and South Africa. Had Israel withdrawn its military attachés from South Africa as the countries of the European Economic Community had done?

80. He also wished to know the percentage of Muslims, Christians and Druze (who were mainly Arabs) in the total population living in the Golan Heights and East Jerusalem.

81. Referring to a question asked by Mr. Aboul-Nasr, he inquired, further, whether Jews from all over the world were encouraged to settle in Israel and

whether Palestinians, who were also scattered around the world, were authorized to return to Israel, either for short visits or to settle permanently.

82. It appeared that the Government of the United States and other countries disapproved of the settlement of immigrants in the occupied territories, but that the Israeli Housing Minister was determined to pursue that policy. How much Arab land was confiscated by the Government to build housing for immigrants in those territories?

83. Lastly, he asked to which party the five Arab members of the Knesset belonged.

84. Mr. GARVALOV welcomed Israel's willingness to cooperate with the Committee.

85. While he, like Mr. Reshetov, recognized the Jews' contribution to the civilization and culture of mankind, the consideration of the reports submitted by Israel undoubtedly prompted a number of questions, doubts and disagreements. For his part, he had expected more of the sixth periodic report of Israel. The report had not followed the guidelines given to States parties by the Committee, contained the kind of peremptory statements to which the Committee had always taken exception, and gave no information about the Palestinians and the Palestinian and Arab populations of the occupied territories that was of relevance to the Convention. He was, however, satisfied with the analysis contained in paragraphs 9, 10, 18 and 39 to 45 of the report.

86. It was true, as the representative of Israel had said, that Israeli society was pluralistic and multiracial. However, he asked whether there was any racial discrimination in the enrolment of Israeli citizens into the Israeli Defence Force (IDF), whether Israeli courts had received complaints alleging acts of racial discrimination, and whether Israel's legislation authorized the establishment and operation of political parties of a racial or ethnic hue. The latter question was to be considered in connection with the content of paragraphs 39 to 45 of the report concerning, in particular, the activities of the late Rabbi Meir Kahane, whose ideology had been notoriously racist.

87. The expression "the principle of equal application of the law" (para. 7) did not necessarily reflect the practice followed in Israel.

88. It emerged from paragraph 14 that Israeli society was multi-ethnic and multi-religious, and yet it appeared that that society was faced with very serious problems.

89. Lastly, it was stated in paragraph 28 of the report that "a careful balancing of the rights guaranteed in a democratic society" had been necessary. Bearing in mind the provisions of the Convention, did that mean that Israeli society attached special importance to certain rights?

The meeting rose at 1.10 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 930th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 August 1991, at 3 p.m.

Chairman: Mr. VIDAS

later: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Fifth and sixth periodic reports of Israel (continued)

Seventh and eighth periodic reports of Mexico

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

In the absence of the Chairman, Mr. Vidas took the Chair.

Fifth and sixth periodic reports of Israel (CERD/C/192/Add.2) (continued)

At the invitation of the Chairman, Mr. Sabel and Mr. Bligh (Israel) took a place at the Committee table.

1. Mr. SONG Shuhua welcomed Israel's continuing dialogue with the Committee, but regretted that its report had not been drafted in accordance with the Committee's guidelines. The report contained substantive information about the relevant legislative provisions, but little about the actual situation in what was a multiracial, multicultural country. Did all people and groups enjoy the same protection and treatment in practice? Did the different groups enjoy the same employment and educational opportunities? The Government representative had informed the Committee that there were five Arab members of parliament; he wished to know whether that number was proportionate to the Arab population, and how, in general, the number of members of parliament of the various nationalities compared with their percentage of the total population.

2. He observed that the Government had a responsibility towards the inhabitants of the occupied areas, and wished to know whether the latters' average life expectancy was any different from that of the population as a whole. Finally, with reference to media reports of violence, including recent reports of threats of violence against young children, he wished to know whether that situation was continuing, or whether, as he hoped, the cases reported were isolated ones.

3. Mr. SHERIFIS, welcoming the presence of a high-ranking delegation from Israel, joined other speakers in expressing the hope that future reports would be drafted in accordance with the guidelines. He welcomed Israel's declared opposition to apartheid, as described in section B of the report.

4. Referring to paragraphs 5 and 50 of the report and to the provision in article 5 of the Convention concerning political rights, he wished to know whether there were any constitutional and/or other guarantees for participation by the various ethnic groups in the political life of the nation, for instance in the Knesset, the Cabinet, the civil service and the diplomatic service. With reference to article 5 (d) (i) of the Convention, he requested additional information on the application of the right to freedom of movement and residence within the border of the State as such and within the territories under the military control of Israel. Further, he wished to know to what extent the right to own property, provided for in article 5 (d) (v), was or could be exercised within the border of the State as such and within the territories under Israel's military control.

5. There seemed to be some contradiction between the statement in paragraph 25 of the report that Israel permitted thousands of its citizens to travel to Arab countries every year and the case referred to in paragraph 29,

in which an order by the High Court of Justice had been required to enable an Israeli citizen to travel to Saudi Arabia.

6. He endorsed the questions asked by Mr. de Gouttes about allegations in the country report for Israel of the United States Department of State, and looked forward to receiving information on the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

7. To Israel's credit, it should be noted that it had signed or ratified a large number of international human rights instruments. In another vein, he noted that Israel had failed to pay its contributions for 1990 and 1991 under the Convention. By way of general comment concerning human rights, as a national of Cyprus who had been unable to return home for 17 years, he subscribed to the point made by Mr. Banton in that connection. In conclusion, he expressed the hope that reason would finally prevail and the necessary political will would be exercised so that peace and justice would return to that troubled region of the world. He hoped that recent promising developments would yield results that would benefit Israel, other countries of the region and the world at large.

8. The CHAIRMAN, speaking in a personal capacity, associated himself with the questions and comments raised by the country rapporteur and previous speakers. In addition, and with reference to article 5 of the Convention, he requested precise, comparative figures to explain the statement in paragraph 21 of the report that the education system in the Arab sector had expanded dramatically.

9. Mr. SABEL (Israel), replying to Committee members' questions and comments and endorsing Mr. Sherifis' hopes for the future, explained the legal situation regarding the territories under Israeli administration. In the sixth report, reference had been made only to Israel, in other words, to the area where Israel law applied. The report applied to all persons present in Israel, including those working in Israel. In the areas under military administration, where Israel law did not apply, the military administration complied strictly with the rules of international humanitarian law as applicable to armed conflicts. The Israeli Government believed that those rules were distinct from the issues dealt with by the Committee. He had noted that some Committee members appeared to consider that those rules should not apply, a view that represented a change in the Committee's previous position. He would convey its new position to his Government, reminding the Committee that his authorities had provided information on the territories in earlier reports but had ceased to do so in subsequent reports after being given to understand that it was the Committee's wish that it should be omitted. He observed that the Committee's new position might be at variance with that of other United Nations bodies. Regarding the future of the territories, their final status would be determined in peace talks with neighbouring Arab States and the Palestinian residents of the territories.

10. Mr. BLIGH (Israel) replying to questions specifically concerning the Arab territories, said that the first question he wished to address was what was meant by a minority group and an Arab in Israel. For a definition of a minority group in the region, he referred the Committee to the authoritative work Minorities in the Arab World by the distinguished writer Albert Hourani,

one of the most notable scholars on minorities in the Middle East, who defined a minority as a group differing from the majority in language, wealth or religion. With regard to the meaning of an Arab, an Arab in Israel was interpreted as anyone who spoke the Arabic language and professed the Muslim or Christian faith. There were various communities in Israel, based on one or a mixture of the factors mentioned in the two interpretations, so that it was difficult to give a clear-cut definition of what constituted a minority in the country. In reply to the question why Muslim religious courts worked only in Arabic, he said that all Muslims residing in Israel were Arabs and therefore Arabic-speaking. They were fully entitled to speak Hebrew in the courts, but in practice chose not to.

11. Regarding the distribution of the Arab population, 45 per cent lived in the north of the country, 40 per cent in the central, most densely populated section, and 15 per cent in the south. Regarding the employment rate, a major shift had occurred in the past year. Until then, the rate among Arabs had been higher than among Jews, whereas it now stood at between 8 and 9 per cent, which was about 2 per cent less than that among Jews. On the question of development areas and Arab towns, there were now six or seven "development areas" in Israel, in which anyone building an industry was entitled to government subsidies. Since most of them were situated in or near Arab areas, the Arab communities benefited from that policy. Moreover, three Arab towns, Umm al-Fahm, Tirah and Taybeh, had recently been recognized as townships, with the result that their budget had been increased, as had the provision for loans. On the subject of health, particularly paramedical services, about 450 Arab paramedics were employed by government or other agencies, and some 850 were studying for the paramedical professions.

12. With regard to education, the Ministry of Education had a special department for the education of Arabs, with specific budget allocations. Arabs had special access to the department, which was headed by an Arab. Although most of the subjects taught to Arabs in schools were the same as those taught to Jews, special subjects were taught solely to Arab students - Arabic language and literature and Muslim and Arab history, while, in accordance with the principle of freedom of religion, students were given basic religious instruction, whether they were Muslim, Druze, Christian or of other faiths. Two years previously, a programme had been introduced to lead Arab students to the high school diploma in the Muslim religion. The Ministry of Education also ran special educational television programmes for Arabs. There had been nine such programmes in 1990, rising to 22 in 1992, with plans for many more. That there were no multiracial elementary or high schools resulted from the right of students to attend schools of their choice, in the areas in which they lived. In technical schools, however, Arab and Jewish students studied together. In the Jewish sector, class sizes averaged 27 students, as against 31 in the Arab sector. Comparative figures had been requested on the number of Arab and Jewish students in elementary and high schools between 1948 and the present day. The number of Arab students had risen from 11,000 in 1948 to slightly over a quarter of a million at present. The number of Jewish students had increased only sevenfold in the same period. There were two reasons for the sharp increase in the proportion of Arab students. The first was the compulsory education system, which had resulted in the enrolment of many new students, mainly girls. In 1948, about 20 per cent of Arab students had been girls, who now represented 51 per cent. The second reason had been the natural increase of some 4 1/2 per cent from

the mid-1960s. There were now about 10,000 Arab teachers in the education system, some 100 of whom now taught Jewish students. Eight hundred and fifty five classrooms were currently being built, bringing the number of classrooms up to about 8,000 for the forthcoming school year.

13. With regard to the political participation of Arabs, similar voting patterns had been observed among Arabs and Jews. In the last parliamentary elections of November 1988, for instance, the percentage of voters out of all those eligible to vote had been 80 per cent for the Jewish sector and 74 per cent for the Arab sector. Regarding represention in the Knesset, there was currently one Arab deputy speaker of the House. There had been Arab deputy ministers in the past, but there were none at present. On the subject of Arab members of parliament, he explained that in the Israeli electoral system, the people voted for slates of candidates, which meant that they were voting for parties rather than individual candidates. Parties could choose whom to include in their lists. There were currently six Arab members of the Knesset, but if the total number of Arab votes were taken into account, including those which had gone to non-Arab candidates, it could be extrapolated that they would account for about 10 or 11 seats. Of the six Arab members of the Knesset, two came from the Communist Party and one each from the United Workers Party, the Labour Alignment, the Arab Democratic Party and the Progressive List for Peace. In reply to the question about the army and the police force, he said that the highest-ranking Arab officer was a Brigadier-General, which was the equivalent to a one-star General in the United States armed forces.

14. In response to the question about whether Israel was open to visitors from other countries, he said that the number of visitors since 1967 exceeded one million. Family visits, medical assistance and education were the main purposes of the visits. On the subject of multiracial organizations, he was not aware of any organization based on national or racial membership, except for those established on a purely religious basis; all organizations were multiracial. All members of the Arab Democratic Party were Arabs, but of their own free choice.

15. With regard to the questions about agriculture, farmers no longer received subsidies of any kind, except indirectly for water. However, since 1989 there had been a special programme providing assistance to bankrupt farmers. Since fortunately no Arabs had gone bankrupt, none had benefited from the scheme. On the question of numbers, there were 80,000 non-Jews in Jerusalem and 14,000 in the Golan Heights. Finally, there was no specific provision for political representation for Arabs in proportion to their total number in the population. Such representation depended on the way political parties were formed.

16. Mr. SABEL (Israel) said that not only did a number of human rights organizations exist, but there were civil servants in the Ministries of Justice and of Foreign Affairs dealing exclusively with human rights. Military service was compulsory for Jews and for Druze, but exemptions existed for other Arabs, who were free, however, to volunteer and many did so. Service in the army conferred no privileges with regard to entry into the university. Grants were paid, however, to both Jewish and Arab students who had seen service to help with their academic fees. Moreover, financial assistance, amounting to some $150,000 in the previous year, was provided for

outstanding Arab students, even those without army service. Deferment of military service was allowed in the case of those studying at higher educational establishments, particularly religious institutions. Conscientious objection was not permitted under the law, but conscripts who could persuade the military authorities that they had a bona fide objection would be assigned to non-combatant duties, for example, in the medical corps. Religious services were not compulsory in the army. No organizations could be registered if they promoted racism, since its propagation was illegal. Private racial organizations were permitted if they were not racist. The measure of the influence wielded by Rabbi Kahane and his followers could be gauged from the fact that in the last parliamentary elections he had received only 1 per cent of the vote. With regard to unemployment, since Israel had no constitution, it followed that a constitutional right to unemployment benefit did not exist. It was, however, paid in cases where public works employment could not be obtained.

17. Where Soviet Jews were concerned, no government directives existed on where they should live. They were provided with a housing loan and were then free to choose their own area, often in consultation with friends or relatives. They arrived in Israel normally by the shortest route. They were granted Israeli nationality immediately, but a passport would be provided for purely administrative purposes within a year unless they had a special need to travel. In that context, he welcomed the Soviet decision to allow Soviet Jews to retain their Soviet passports and nationality. The endeavour was made to provide them with immediate permanent housing, but where that was not possible, temporary housing was made available.

18. On the question of South Africa, Israel had often made its abhorrence of apartheid quite clear. It had joined in international action against apartheid, on which its policy was in line with that of the majority of the international community. The contacts it had maintained with South Africa had been for the sake of keeping up cultural ties with organizations combating racial discrimination. He could not deny that racism existed in Israel, but he believed that the country had a good record with regard to the legal sanctions against propagating it. No party was permitted to stand for the Knesset on a racist platform. The same applied to any party that negated the democratic nature of Israeli society.

19. With regard to the country report by the United States Department of State, the matter would be dealt with in Israel's next periodic report. Basic human rights could not be violated in Israel even in times of emergency. The High Court had the right of supervision and the right to issue writs of mandamus, even against the security forces. There were no circumstances in which the right to habeas corpus was not observed. There was no death penalty.

20. In answer to the question regarding radio broadcasts during the Gulf war, he said that programmes had gone out in Amharic, Arabic, English, French, Hebrew and Russian. A full Arab language service was provided, not only in times of emergency. With regard to the number of non-Jewish teachers, he said that in the schools there were about 100, teaching mostly mathematics and science. He did not have available the figures for the corresponding number teaching in universities.

21. As far as immigration was concerned, that was a basic principle underlying the creation of the State of Israel. There were two aspects to the acquisition of Israeli nationality. First, as in any other country, a prospective national had to apply, to prove that he knew the national language and to show that he had decided to reside permanently in the country, having given up a foreign nationality. In addition, however, all Jews had the right to enter the country, even if they would constitute a potential burden because of disablement or unfitness for work. There were several reasons for that rule. One was that in some countries Jews were not permitted to be nationals, and another was the people's memory of the Second World War, when various countries had felt no obligation to accept refugee Jews, a situation that had arisen again recently with regard to the Ethiopian Jews.

22. In response to a question regarding restrictions on travel to Mecca, he said there were none. It was freely permitted, even in time of war, except for some individuals who constituted a security risk. In 1991, 1,500 applications to travel to Mecca had been received and only eight had been disallowed on security grounds. He reminded the Committee that Israel had no State religion.

23. He could supply no statistics on the racial composition of the population, because none existed. The Government of Israel viewed categorization by racial description as potentially offensive. Statistics existed on the country of birth. On the question of Palestinian refugees, he said that it was a political issue which Israel was prepared to discuss as part of the general peace process. Israel would also be raising the issue of the 800,000 Jewish refugees who had had to flee from Arab countries, leaving all their property behind.

24. With regard to discrimination, it was illegal in Israel for any public institution or private employer to refuse employment on racial grounds. The approach to be adopted to racial discrimination by private citizens was currently being discussed in the Knesset. Private land could be compulsorily appropriated for public purposes, but not on a discriminatory basis. If the individual whose land was appropriated had a valid objection, he could take the case to court, where the requisite compensation was determined. Although there were restrictions on the use of water, they applied to everyone equally.

25. Finally, he said that two weeks earlier Israel had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Government was shortly to consider a proposal for ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Israel would then have ratified all the major international human rights instruments.

26. Mr. ABOUL-NASR said that, although the Convention did not deal with religion as such, he wished to point out that the Brigadier-General mentioned by Mr. Bligh was a Druze and that the Arabs recruited as frontier guards were also Druze. The army was principally composed of Jews and Christians, so the Israeli delegation had tacitly conceded that Arabs were not treated equally. However, he was particularly interested in the news that Israel applied international law in what he would call the occupied territories. That would mean the Fourth Geneva Convention, to which Israel was a party, although it had recently informed the International Committee of the Red Cross that it was

not fully applying its provisions. He questioned whether the demolition of homes on the West Bank, or the expulsion of the population, was in conformity either with the Geneva Convention or the International Convention on the Elimination of All Forms of Racial Discrimination. He therefore wished to know what international law was applied. In the absence of Israel law and the Fourth Geneva Convention, it seemed to be the law of the jungle.

27. Mr. de GOUTTES said that much thought would need to be given to the answers provided by the Israeli delegation. He considered, however, that the Committee should discuss as a matter of urgency the very delicate question of how to determine whether the International Convention on the Elimination of All Forms of Racial Discrimination or, as the Israeli Government maintained, the Fourth Geneva Convention, should be applied in the occupied territories. It was both a legal and a political problem.

28. Mr. WOLFRUM said that, according to Israel, the rules pertaining to armed conflict were applied in the occupied territories. Those rules were contained mainly in the Fourth Geneva Convention, the Additional Protocols and the Hague Rules. The most specific provision was article 3 of the Fourth Geneva Convention, which laid down minimum standards on human rights. The observance of the rules laid down in the international instruments he had mentioned therefore led ineluctably to observance of the International Convention on the Elimination of All Forms of Racial Discrimination. He was impressed with the way the delegation had tried to answer many of the Committee's other questions. He would, however, prefer to see the answers in writing in the next periodic report. He welcomed the news that Israel was likely to ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Was there a possibility of its ratifying the Optional Protocol to the International Covenant on Civil and Political Rights as well?

29. Mr. YUTZIS welcomed Israel's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He would, however, like information on the status of what he would call the occupied territories. In particular, he would like to know whether they had been assumed to form part of Israel in deference to the Committee's possible interpretation of the situation. Without denying that such an interpretation might emerge in future, he said that the Committee had not yet taken any decision on the matter. The treatment of Arabs in the occupied territories was essentially a humanitarian issue with political overtones, and he wished to know how article 3 of the Convention was applied in those territories.

30. Mr. SABEL (Israel) said that the Israeli position on South Africa had been made clear in its report. Its policy was more explicitly opposed to apartheid than that of many other countries. With regard to the rules of international law, Israel accepted the restrictions imposed by the various international instruments, including the Hague Rules. Indeed, the Israeli High Court had enforced those restrictions on the armed forces. Israel accepted the Fourth Geneva Convention, but claimed the right to do so de facto, not *de jure*. He conceded that it raised some problems with regard to the Convention's legal applicablility. On the final point, he accepted that the status of the inhabitants of the West Bank (Judaea and Samaria) was in dispute, but Israel could not accept that it was foreign territory.

31. The CHAIRMAN said that the Committee had concluded its discussion of the fifth and sixth periodic reports of Israel. It was to be hoped that those questions which had not been answered by the Israeli representatives would be covered in the next periodic report, and that the additional statistics requested would be furnished.

Mr. Sabel and Mr. Bligh (Israel) withdrew.

The meeting was suspended at 4.35 p.m. and resumed at 4.50 p.m.

Mr. Shahi took the Chair.

Seventh and eighth periodic reports of Mexico (CERD/C/194/Add.1)

32. The CHAIRMAN drew attention to the fact that the seventh and eighth periodic reports were submitted together in document CERD/C/194/Add.1.

At the invitation of the Chairman, Mr. Vargas and Mr. Ruíz (Mexico) took a place at the Committee Table.

33. Mr. VARGAS (Mexico), introducing his country's seventh and eighth periodic reports, said that he welcomed the interest shown by the Committee in the situation in Mexico, and in particular that of its indigenous populations. The reports gave details on current policy towards those communities, and information with regard to progress made in the administration of justice and programmes aimed at combating extreme poverty. Policy in the latter regard was based on structural change in the economy, the key element being the National Development Plan, the aim of which was to promote lasting growth. The Government's approach was also embodied in the National Solidarity Programme, which relied on action undertaken by the communities themselves and by groups within society to improve their standard of living. Other programmes focused on migrants and the integration of women in development.

34. In the case of the indigenous populations, the President had given priority attention to the conditions of inequality and injustice in which those communities lived. In terms of numbers, the indigenous population in Mexico was the largest on the America continent. Over the century it had increased in terms of absolute numbers, but had declined as a proportion of the population as a whole: thus, although in 1900 they had numbered 2 million and in 1990 approximately 8 million, they had declined from a proportion of 17 per cent in 1900 to only 9 per cent in 1980. They formed an integral part of the cultural and historical heritage of Mexico, and the current Government of President Salinas had committed itself to finding solutions to the problems facing the indigenous peoples in order to repay the debt the country owed to those communities.

35. In addition to the National Solidarity Programme, which recognized indigenous peoples and communities as priority targets for its activities, a national commission for indigenous peoples had been established in 1989 to study possible reforms to the Constitution and to eliminate the injustices suffered by those peoples.

36. As a further step, the President of the Republic had submitted, on 7 December 1990, a draft Decree which supplemented article 4 of the

Constitution by recognizing the rights of the indigenous peoples. Shortly thereafter, the National Institute for Indigenous Affairs (INI) had prepared and circulated the National Programme for the Development of the Indigenous Peoples for 1991-1994, which assessed the situation of those peoples and the most pressing problems confronting them with a view to specific action to remedy injustice and combat poverty. The new strategy, backed up by Government expenditure and investment, was intended to assist the efforts of the indigenous peoples themselves to improve their level of education, nutrition, health, housing, vocational opportunity and employment, while increasing production and the accumulation of wealth. Key projects within the framework of the Programme involved implementation of the Justice Programme, the establishment of a Solidarity Fund for Development and of a National Indigenous Languages Programme, support for the cultural heritage, assistance to the indigenous population in the metropolitan area of Mexico City and a Research Programme. In addition, subprogrammes were planned in the fields of health and welfare, education, culture, infrastructure and productive investment at regional and State level.

37. Acknowledging that part I of his country's combined seventh and eighth periodic report did not conform to the guidelines for presentation, he said that every effort would be made in the succeeding report to keep within those guidelines.

38. The current policy of the Government of Mexico was based on respect for the indigenous peoples and communities by guaranteeing equal access to the law and protecting and developing their cultures, social organizations and resources. With that aim in view, the draft Decree submitted by the President added a new and important paragraph to article 4 of the Constitution stating, inter alia, that the law would protect and promote development of the languages, cultures, usages, customs, resources and specific forms of social organization of the indigenous peoples and would guarantee them effective access to the courts. It also affirmed that judicial and administrative proceedings in agrarian disputes to which they were parties would take into account their legal practices and customs within the terms established by law. The draft decree avoided all forms of paternalism and would provide a legal basis for protecting the cultural distinctiveness of the indigenous peoples without differentiating them as a separate category of the Mexican people.

39. Mr. de GOUTTES, Country Rapporteur, welcomed the regularity with which Mexico, in contrast to so many other States parties, submitted its periodic reports, and the care taken to respond to the issues raised earlier by members of the Committee.

40. In particular, noteworthy efforts had been made on behalf of the most disadvantaged categories of the population, primarily the peasantry and the indigenous peoples. In that connection, the National Solidarity Programme was of great importance in that it represented a politically courageous attempt - expenditure on social welfare had been increased by 15 per cent in real terms in 1990 - to address the underlying causes of discrimination, which in Mexico was not so much due to racial prejudice as to social and economic disparities and, in the case of the indigenous populations, to their effective marginalization and lack of participation in development.

41. Efforts had also been made to combat human rights abuses, as was evident from the campaign against corruption, police violence and delays and shortcomings in the judicial process, and from the establishment in June 1990 of a National Human Rights Commission, which was of special interest to the Committee.

42. With regard to the format of the report, it was to be noted that the Government had not fully complied with the new guidelines for reporting. While part II provided a satisfactory assessment of the measures taken to implement the specific provisions of the Convention, part I did not furnish the required outline of the general, social, economic, political and institutional framework within which implementation was taking place. He hoped that the guidelines would be more strictly adhered to in the next periodic report.

43. Turning to the actual content of part I, he noted the lack of adequate information on the demographic situation in Mexico, pointing out that it should have been included in the section on article 5 of the Convention. While data were provided on overall population trends between 1895 and 1990 and on distribution by sex and by urban and rural areas, no indication was given of the proportion of indigenous populations, in percentage terms, in the population as a whole or of the ethnic breakdown of those populations and their birth rates. The report also failed to mention the number of Mexicans, particularly Amerindians, emigrating abroad and especially to the United States, or the number of those who returned.

44. With regard to the state of Mexico's economy, the report did not give figures for the inflation rate, trends in GNP, GDP and the purchasing-power of wages, or for unemployment and underemployment. The lack of such data was particularly unfortunate in view of the perceptible improvement in the country's economy in recent years.

45. In the social sphere, it would have been useful to have information on social tensions and strikes and on the migration of rural populations to the cities and the social problems affecting migrants in the suburbs and shanty towns.

46. At the political level, the Committee would have welcomed fuller information on the processes of renewal and democratization currently taking place and on the dialogue with the opposition, on the multi-party system which was now accepted, and, finally, on the relations between the State and the press.

47. He expressed the hope that all the gaps to which he had drawn attention would be filled in the Government's next periodic report.

48. Turning to article 2 of the Convention, he stressed the importance of the information provided in paragraphs 11 to 50 of the eighth report on the situation of the indigenous population. A number of legislative reforms had been undertaken to ensure a more equitable treatment of indigenous persons: bail arrangements had been broadened to enable more people, particularly the poor, to be granted provisional release; safeguards had been introduced with regard to confessions; an interpreter must be provided if the person concerned did not speak Spanish; and the obligation of the courts to give due weight to

all facts that threw light on the personality and background of members of particular ethnic groups involved in the commission of an offence was strengthened. Those measures were in conformity with articles 1 to 5 of the Convention. He asked, however, whether the new regulations for obtaining confessions applied only to those accused who were members of indigenous communities or socially disadvantaged and whether the obligation of the court to give due weight to all facts that threw light on the personality and background of accused persons of particular ethnic groups only concerned certain categories of offences.

49. The Justice Programme for Indigenous Peoples, described in paragraphs 19 to 24 of the report, was ambitious, original and of particular interest to the Committee. He inquired whether the Programme was simply an objective or whether concrete results had already been obtained. The reference to 9,000 indigenous prisoners in paragraph 22 was not sufficiently clear, because it did not indicate what percentage of the overall prison population was involved. He would also like more information on the role, composition and work of the National Commission of Justice for Indigenous Peoples referred to in paragraph 20 and on how that body coordinated its activities with that of the National Human Rights Commission.

50. The third series of measures taken by the Government of Mexico to protect the rights of indigenous persons concerned aid in agrarian matters (paras. 25 to 36). There again, he appreciated the efforts of the Government of Mexico to respond to the questions raised by the Committee during the consideration of previous reports by providing updated information on land distribution, the regularization of land tenure, the updating of the rights of peasants and the experience of "reconciliation" carried out by teams from the Department of Agrarian Reform, the National Institute for Indigenous Affairs (INI) and the State Governments. Such measures would enable progress to be made towards solving the difficult agrarian problem. But it would have been useful if the Mexican delegation had reported on the continuing conflicts, acts of violence, and illegal arrests and expulsions of which peasants and indigenous persons had been the victims at the hands of landowners, "pistoleros" and, indeed, security forces, in particular in the States of Oaxaca and Chiapas. The National Human Rights Commission, in its recommendation No. 30/90 (para. 43 of the report) had referred to human rights violations affecting the Nahua indigenous persons in the municipality of Ilamatlán, Veracruz, and Amnesty International had also drawn attention to such incidents, in particular the case of 100 peasant families who had been forcibly expelled by members of the police and pistoleros from community land that they had claimed in the State of Chiapas. Amnesty International had also focused in a recent document on the human rights violations committed against the indigenous community of the Trique in Oaxaca, in particular alleged cases of murder, torture and the disappearance of two children. He asked the Mexican delegation whether it could confirm that information.

51. Paragraphs 37 to 46 and 117 to 126 reported in depth on the National Human Rights Commission. It would be useful to know how the 10 members of the Commission's Board were designated and whether the Commission's recommendations were legally binding. Paragraphs 39 to 46 of the report cited 10 of those recommendations, and he inquired whether they had been followed by the legal and administrative authorities concerned. He also asked why the scope of the National Commission had not been expanded to allow it to

intervene in the case of offences committed by pistoleros, landowners or unscrupulous businessmen.

52. Concerning article 3 of the Convention, the information provided indicated that the Government of Mexico had complied with its obligations under that provision.

53. Turning to article 4 of the Convention, he noted that a misunderstanding persisted. The Mexican Government maintained that its national legislation was in conformity with its obligations under the Convention, because the Mexican Constitution guaranteed fundamental rights for all individuals, which meant that there was no discrimination based on race, ethnic origin, political convictions, etc.; furthermore, it was argued, the procedure of amparo ensured respect for those guarantees, and the Penal Code imposed penalties for violations. However, the Committee had always considered that Mexican legislation was not in conformity with the country's obligations under article 4 of the Convention, because it contained no specific provisions prohibiting acts of racial or ethnic discrimination. The Committee had also pointed out that even if racial discrimination did not exist in Mexico, such legislation was necessary, if only to prevent its emergence. It was to be hoped that the dialogue between the Mexican Government and the Committee would enable an agreement to be reached and that the Government of Mexico would amend its legislation accordingly.

54. As stated in paragraph 77 of the report, article 133 of the Constitution stipulated that international treaties were the supreme law of the Union and that, accordingly, the Convention directly constituted the applicable law and might serve as the basis and grounds for any legal action. He asked whether that meant that legal proceedings could be instituted and that sentences could be pronounced by the courts on the sole basis of the violation of provisions of the Convention, without reference to the provisions of the domestic Penal Code.

55. As to article 5, he would like to know the number of persons belonging to indigenous or peasant communities who had been elected to the parliament; the percentage of indigenous persons and peasants who had acceded to public functions in the administration, the judicial system, the police and the educational system; the number of marriages between indigenous and non-indigenous persons; and measures taken to help poor people living in urban centres, a situation to which reference had been made in paragraph 96.

56. Concerning article 6, the report provided interesting information on amparo proceedings. In order to assess its impact on indigenous and rural populations, however, it would be useful to have statistics on the number of such proceedings instituted by indigenous persons and peasants. According to paragraph 113, proceedings could be instituted by private individuals, and he inquired whether associations or interest groups representing certain categories of the population could do so as well.

57. With regard to article 7, paragraphs 127 to 157 provided useful information on measures taken to help indigenous persons in regard to bilingual and bicultural education. The report noted that 9 per cent of Mexico's population spoke an indigenous language, that measures to promote bilingual education had been taken for 46 indigenous groups and that school

enrolment had risen by 6.38 per cent between 1981 and 1990. He asked whether information could be provided on illiteracy levels in the indigenous population and, concerning the Solidarity Fund for the Transfer of the Communications Media mentioned in paragraph 148, whether measures had been taken not only to expand the indigenous radio-broadcasting network and enhance the transfer of video equipment but also to make available television channels with programmes in indigenous languages.

58. He was aware that the Mexican delegation would not be able to answer all his questions immediately and that some replies would have to be included in its next periodic report. The large number of questions raised testified to the intense interest in the situation in the country. The Committee paid a tribute to the quality of the report, which reflected an exemplary willingness to engage in a dialogue with the Committee.

59. Mr. BANTON said that the Committee should welcome the package of legal reforms referred to in the report. He asked whether any criteria had been decided upon to measure the success or otherwise of those reforms. In some countries, statistics collected permitted comparisons of the experiences of different groups, but that might be difficult in Mexico, where it was not always easy to employ ethnic classifications. Information would be important on four occupational groups: police, prosecutors, court staff and judges. He would like to know whether any generalization could be made for any region of Mexico about the proportion of persons of Indian origin or who identified themselves as Indian. The same question could be asked concerning the ethnic composition of the National Commission of Justice for Indigenous Peoples referred to in paragraph 20. With regard to the four occupational groups mentioned, he asked whether any training was being undertaken to make those groups more sensitive to the relevance of cultural differences to their duties.

60. Mexico should also be congratulated on the special programme referred to in paragraph 33 and on the establishment of the National Human Rights Commission. Concerning the cases cited in paragraphs 41, 42, 45 and 46, he asked why, if the time-limit for sentencing had been exceeded, the detained persons were not entitled to be released.

61. Paragraph 96 of the report made no mention of the birth rate, which was obviously of vital importance. It would be useful to know whether the birth rate was higher among indigenous groups. Experience elsewhere suggested that a high birth rate could not be reduced by the provision of information and birth control aids; it was more important to open up career opportunies for women as an alternative or an addition to child-raising.

62. He had already had occasion to ask the Government of Mexico about the Isthmus of Tehuantepec case, but unfortunately he had not received a reply. In particular, he wondered whether it was true, as reported in the press in September 1986, that a Mexican official had told the Prime Minister of Japan that it was not necessary to inform landowners of plans to build a large oil pipeline across their property. The report made it clear, however, that the question of indigenous land rights was receiving more attention than it had in the past.

63. Mr. FERRERO COSTA said that, since its last report, Mexico had made substantial progress in complying with the Convention. The regular and timely reporting by the Government of Mexico demonstrated its willingness to cooperate with the Committee. The eighth report focused its attention on aspects of the indigenous population, answering many questions that had been raised earlier.

64. Mexico was to be commended on avoiding the mistake other countries had made in denying the existence of racial discrimination. But the Government of Mexico had not yet adopted specific legislation prohibiting racial discrimination, affirming that special legislation was not necessary. He reminded the delegation of Mexico that such legislation was an obligation under the Convention, and it was to be hoped that the country would change its position on that question.

65. All the countries of Latin America had a large indigenous population, and the question of discrimination against the indigenous population was closely linked to economic and social differences. Some ethnic groups were consistently relegated to a marginal existence. The interrelationship between social, economic and social issues and discrimination against indigenous populations raised a difficult problem in many countries in Latin America, and that was clearly the case in Mexico.

66. He wondered whether Mexico's liberal economic policy could help improve the living standards of the majority of the population.

67. The National Solidarity Programme was an interesting project. He asked how it was implemented in practice, whether it was improving the economic and social situation of the Mexican population and what its impact had been on the implementation of article 5 (d) and (e) of the Convention.

68. Concerning the National Human Rights Commission, an important innovation that enabled human rights complaints to be monitored, he asked whether that body's recommendations were binding. It would also be useful to know more about the judicial procedure for receiving complaints of racial discrimination made by Mexican citizens.

69. Mexico's eighth report had made a favourable general impression. He had noted positive developments with regard to Mexico's compliance with the Convention. It was to be hoped that the improvement in the overall situation in the country meant that the Government would agree to make the declaration provided for in article 14 of the Convention.

The meeting rose at 6.15 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 931st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1991, at 10 a.m.

Chairman: Mr. FERRERO COSTA

later: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Seventh and eighth periodic reports of Mexico (continued)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

In the absence of the Chairman, Mr. Ferrero Costa took the Chair.

Seventh and eighth periodic reports of Mexico (CERD/C/194/Add.1) (continued)

At the invitation of the Chairman, Mr. Vargas and Mr. Ruiz (Mexico) took places at the Committee table.

1. Mrs. SADIQ ALI congratulated the Mexican Government on keeping up a very constructive dialogue with the Committee.

2. There were many positive features in the report, including the establishment of bodies for the protection of human rights, especially the rights of indigenous peoples. It was to be hoped that the indigenous peoples were represented on those bodies.

3. The text of the Official Gazette of the Federation, dated 8 January 1991, concerning amendments to various provisions of the Federal and District Codes of Penal Procedure (paras. 12 and 18) had been attached to the report in Spanish. It was to be hoped that the relevant passages from the Code of Penal Procedure would be included in Mexico's next periodic report, so that the members of the Committee could study them in the Committee's working languages.

4. Regarding the situation of the rural population, especially the indigenous population, perennial conflicts over the ownership of land had led to physical abuse, arbitrary detentions and killings of peasants, most of whom were indigenous people. Despite the stated intention of the President of the Republic to "modernize" the country, there had been continued recourse to torture and the practice of holding detainees incommunicado. Those practices had been denounced by the Mexican Bar Association and by Amnesty International. She would like to know what the Government was doing to reach an amicable settlement of land disputes and whether there was a land reform programme.

5. With reference to indigenous bilingual-bicultural education (para. 131), it seemed that the indigenous peoples feared the "Hispanicization" of their languages. It also appeared that study programmes and textbooks contributed to the destruction of those languages and that the school drop-out rate was high. The indigenous peoples were finding it difficult to preserve their languages and culture and were demanding that indigenous languages be recognized as national languages, on a par with Spanish. They were also demanding a multi-ethnic State in which the main characteristics of the indigenous peoples were respected, as well as participation in decision-making and equality. She would like to know the Government's reaction to those demands.

6. Lastly, she wondered whether any action was contemplated to sensitize the members of the police force, who were largely responsible for the killings among the indigenous peoples and the discontent in rural areas.

Mr. Shahi took the Chair.

7. Mr. YUTZIS said he associated himself with most of the members of the Committee in expressing satisfaction with the report submitted and welcoming the Mexican Government's willingness to pursue the dialogue.

8. He wished, nevertheless, to raise a substantive issue, which concerned the implementation by Mexico of article 4 of the Convention. It was stated in paragraph 67 of the report that "the Government of Mexico does not share the Committee's opinion that Mexican legislation contains no specific provisions to prevent all forms of racial discrimination". He believed that, when the implementation of any of the articles of the Convention gave rise to problems, there were ways of resolving some of them. However, Mexico had not taken advantage of that possibility. That being said, huge difficulties could arise when it came to taking practical action against institutions or bodies whose purposes were contrary to the objectives of the Convention.

9. With regard to the part of article 5 of the Convention relating to economic and social rights, he noted from paragraphs 31 and 33 of the report that Mexico was making substantial efforts to address a universal problem, that of land tenure. In addition to its economic aspects, that question had a spiritual, psychological, historical and cultural dimension for the indigenous peoples, affecting their very identity. A product of colonialism, the problem was exacerbated by the structural imbalances peculiar to third-world countries. To those structural problems were added clashes of interests which slowed down the process of granting land to those concerned. It would be interesting to hear how the Mexican Government intended to resolve those difficulties.

10. Mr. SONG Shuhua congratulated the Mexican delegation on the quality of the report it had submitted.

11. With regard to the legal reforms mentioned in paragraph 13 of the report, whose aims included "broadening bail arrangements to enable more people, particularly poor people, to be granted provisional release", he asked whether their implementation was not likely to unbalance the administration of justice to the detriment of the indigenous peoples.

12. Paragraph 30 revealed that indigenous peoples accounted for 70 per cent of the peasant sector. Since their numbers were growing, he wondered whether the Government planned to give them access to more land and, if so, whether it intended to introduce new taxes. Since most commercial crops were produced by the indigenous population, he asked whether there was a different rate of taxation for grain and for subsistence crops, for example.

13. Lastly, he asked whether the indigenous rural population was treated differently from the rest of the Mexican population.

14. Mr. VIDAS said that, in its consideration of the seventh and eighth periodic reports of Mexico, the Committee should bear in mind the enormous problems faced by that country and the steps it had taken since the submission of its previous report to comply with its obligations under the Convention. In that connection, he drew attention to the content of paragraphs 11 to 50 of the report, relating to the implementation of article 2 of the Convention.

15. He regretted, however, that the Committee had no data on the breakdown of Mexican society by ethnic groups. As Mr. de Gouttes had pointed out, the figures concerning the indigenous population varied between 8 and 27 million inhabitants. To judge by the information given in the report, the indigenous peoples in Mexico numbered close on 20 million. That figure was to be compared with the statement in paragraph 26 that "there are approximately 2,000 recognized indigenous communities with title to 16 million hectares of land, constituting 8 per cent of the national territory". It would therefore be very useful to know what measures had been taken in regard to land distribution and security of land tenure.

16. Thanking the representatives of Mexico for their report and their participation in the dialogue with the Committee, he urged the Mexican Government to continue its efforts and to maintain the political will it had hitherto displayed.

17. Mr. WOLFRUM paid tribute to Mexico for the efforts it had made to ensure the integration of the various ethnic groups and to meet the needs of the indigenous peoples despite serious economic difficulties.

18. As Mr. Yutzis had already mentioned, the question of land rights was more than an economic issue; it was bound up with the cultural heritage and the very identity of the indigenous peoples. He therefore considered that the distribution of land to those groups should take account of the cultural heritage of those concerned, while acknowledging that that was a matter within the competence of the Mexican Government.

19. Lastly, he expressed the hope that, in its next periodic report, Mexico would be in a position to shed light on the violations reported by Amnesty International.

20. The CHAIRMAN, speaking in his capacity as a member of the Committee, recalled that it was stated in paragraph 77 of the report that, according to article 133 of the Constitution, "international treaties are the supreme law of the Union; [and that] accordingly, through incorporation into national legislation the Convention directly constitutes the applicable law and may serve as the basis and grounds for any legal action". He would like to know, therefore, what sanctions Mexican legislation provided for in the event of a violation of the provisions of the Convention, particularly the provisions of article 4.

Mr. Vargas and Mr. Ruiz (Mexico) withdrew.

Fifth and sixth periodic reports of Israel (CERD/C/192/add.2) (continued)

21. The CHAIRMAN invited the Committee to evaluate the fifth and sixth periodic reports of Israel.

22. Mr. YUTZIS proposed the following evaluation:

> "The Committee expresses its appreciation of the continuing dialogue with the Israeli Government. The Committee has taken note of Israel's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of its intention to

> accede to the International Covenant on Civil and Political Rights. At the same time, the Committee regrets that the report does not follow the guidelines on the presentation of reports. The Committee reiterates, moreover, that Israel does not provide basic information concerning the demographic composition of its population. The Committee reiterates what was stated in its report to the General Assembly on the second periodic report of Israel that the Israeli Government has never implemented nor respected the principles of international law in the occupied territories, including the principles of the non-use of force, or any of the resolutions and decisions of the United Nations. Israel should be asked if it has really adhered to the basic principles of the Convention, and any formal discussion on legal provisions which could disguise the real situation in the country would be inappropriate. In addition, the Committee took note with great concern of the situation in the occupied territories and of the statement of the representative of Israel that his country is under no obligation to apply existing international human rights standards, and the Convention, in the occupied territories. The Committee urges the Government of Israel to answer all the questions it asked and the concerns expressed at previous meetings in its next periodic report."

23. Mr. BANTON said he thought that the phrase "of its intention to accede to the International Covenant on Civil and Political Rights" might be going too far; it should, perhaps, read instead: "of the probability that it would accede ...". The phrase "is under no obligation to apply existing international human rights standards, and the Convention, in the occupied territories" required clarification. The representative of Israel had said that his Government was applying those standards de facto, but that, for reasons of its own, it did not consider itself to be bound by the Fourth Geneva Convention.

24. Mr. ABOUL-NASR recalled that the Israeli Government had already notified the International Committee of the Red Cross that it was not bound by the Fourth Geneva Convention in the occupied territories. Yet, when the representative of Israel had been questioned on the subject, he had stated that the Convention's provisions were, in fact, respected.

25. Mr. BANTON said that the Fourth Geneva Convention spoke of "High Contracting Parties". Israel did not recognize Jordan as a "High Contracting Party" and had therefore stated that it observed the principles but not the legality of the Convention.

26. Mr. WOLFRUM said that that was a legal technicality. The representative of Israel had stated that the Fourth Geneva Convention was applied where Israeli law applied; the same held true for the International Convention on the Elimination of All Forms of Racial Discrimination.

27. Mr. VIDAS said that it would be preferable if the Secretariat could distribute the text read out by Mr. Yutzis, and it would also be useful if it could speed up the distribution of the summary records covering the consideration of the reports of Israel.

28. Mr. ABOUL-NASR said that the latter request might be difficult to meet, the Committee having received few summary records to date. However, he agreed with Mr. Vidas about waiting until the text proposed by Mr. Yutzis had been distributed.

29. The CHAIRMAN, speaking in his personal capacity, said that the representative of Israel had stated that Israeli legislation was not applied to the occupied territories.

30. Mr. YUTZIS said he agreed that it would be better to wait until his text had been distributed before continuing the consideration of the fifth and sixth reports of Israel.

31. Mr. de GOUTTES said that he had raised a question of principle regarding the application of law in the occupied territories. In his view, the evaluation must include a reference to the Israeli position maintaining that the International Convention on the Elimination of All Forms of Racial Discrimination did not apply in the occupied territories because those territories were not under Israeli law. Needless to say, it must also include the Committee's reservations concerning that position.

32. THE CHAIRMAN, speaking in his personal capacity, said that the Committee should also refer to article 3 of the Convention, which stated that "States parties ... undertake to prevent, prohibit and eradicate all practices ... in territories under their jurisdiction".

33. Mr. BANTON noted that article 6 was also relevant: "States parties shall assure to everyone within their jurisdiction ...".

34. The CHAIRMAN, speaking in his personal capacity, said that, with the help of the Secretariat, the Committee might also consult the preparatory documents of the Convention.

35. Mr. RESHETOV pointed out that the Israeli delegation, which was made up of eminent lawyers, had made a distinction between human rights standards that were valid in times of peace, including those contained in the Convention and international humanitarian law, of which the Fourth Geneva Convention was an example, which was applicable in times of war. Israel's position was that the occupied territories must be considered as being in a state of war.

36. THE CHAIRMAN suggested that the Committee resume its consideration of the reports of Israel when the documents requested had been made available.

It was so decided.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6) (continued)*

Preparation for the joint meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of Racial Discrimination (continued)

37. The CHAIRMAN drew the Committee's attention to a note from the Bureau of the Sub-Commission concerning the preparation for its joint meeting with the Committee. The note proposed that the meeting should take place on 19 August 1991 from 10 a.m. to 1 p.m. in Conference Room XVII of the Palais des Nations. The members of the two bodies would sit together in English alphabetical order. The meeting would be public, and only the members would have the right to take the floor. The Chairman of the Sub-Commission and the Chairman of the Committee would each preside over half the meeting. Interpretation would be provided in the six official languages. The agenda would be as follows:

(1) Preliminary statements by the Chairmen: Brief presentation by each (eight minutes) of the "identity card" of each body;

(2) Identification of issues of common interest;

(3) How to ensure coordination, notably for the exchange of information on the fight against discrimination and, possibly, a common contribution to the preparations for the 1993 World Conference on Human Rights, including the establishment of a joint working group.

38. Mr. RESHETOV said that the secretaries of the two organs should also participate in the meeting. He also pointed out that the non-governmental organizations (NGOs) had a special mandate in the Sub-Commission and certain rights in that organ, which was not the case in the Committee. The NGOs were a storehouse of information on questions of interest to the Committee and, if they followed its work more closely, that would heighten public awareness on the subject. Of course, owing to time constraints, the NGOs would not be able to take the floor at the joint meeting, but the occasion might be used to improve their contacts with the Committee.

39. The CHAIRMAN said he agreed that it would not be possible to allow the NGOs to speak but, if the meeting was an open one, they could attend. The meeting would be of a preliminary and mainly procedural nature.

40. Mr. FERRERO COSTA said he endorsed the proposal on the organization of the meeting, which, he agreed, should be an open one. As to the agenda, the Chairmen should not confine themselves in their preliminary statements to the mandates of the two organs but should also be able to speak for about 10 minutes on subjects of shared concern. Among such subjects, the Chairman had already mentioned the identification of issues of common interest and the

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* Resumed from the 928th meeting.

question of how to ensure coordination between the two bodies, notably for the exchange of information on the fight against racial discrimination. He also recalled the topics that the Under-Secretary-General for Human Rights had enumerated in his statement at the beginning of the current session, in particular the question of conflicts that might arise between certain human rights. One might also add the study of recent trends in racial discrimination, surely a question of concern to the two monitoring organs devoted to eliminating racial discrimination. Whatever the subjects selected for the agenda, it was very important to initiate a dialogue between the Sub-Commission and the Committee.

41. The CHAIRMAN said that it was too late to draft a joint agenda, and he proposed that each member of the Committee address questions of interest to him within the allotted time of three minutes for each speaker. The document drafted by Mr. Wolfrum for the joint meeting would be distributed to the members of the Sub-Commission.

42. Mr. LAMPTEY said that the Committee had already taken a decision on the modalities and content of the joint meeting.

43. The CHAIRMAN asked the members of the Committee what they thought he should focus on in his preliminary statement.

44. Mr. VIDAS agreed with the Chairman that the meeting should be an open one. In his view, Mr. Shahi should chair the first part of the joint meeting, and he should point out in his preliminary statement that, unlike the Sub-Commission, the Committee was a body established by virtue of an international instrument. He was opposed to the idea of setting up a joint working group, which would not, he thought, yield concrete results. He proposed waiting to see what results the first joint meeting produced. The Sub-Commission should take the opportunity to see what it could do to improve the application of the International Convention on the Elimination of All Forms of Racial Discrimination.

45. Mr. ABOUL-NASR said that, in view of the very short time allotted to each speaker, the members of the Committee and the Sub-Commission would be able only to exchange their points of view on possible future cooperation between the two organs and on the difficulties encountered in carrying out their respective mandates. There would be no time to present reports or studies. He did not expect concrete results from the first joint meeting. Perhaps the Committee and the Sub-Commission could meet again at a later date to discuss how they might cooperate. In his preliminary statement, the Chairman might give expression to the Committee's desire to cooperate with the Sub-Commission.

46. Mr. WOLFRUM said that the Committee was devoting too much time to preparing the joint meeting with the Sub-Commission. As pointed out by Mr. Lamptey, it had already taken a decision on that subject. It should stick to the proposed programme, which was a practical one. He endorsed the previous speaker's comments; the members of the Committee and of the Sub-Commission would have just enough time for an exchange of experience. He was pleased that the document he had drafted had been distributed to the members of the Sub-Commission, and he therefore did not intend to introduce it at the joint meeting.

47. The CHAIRMAN said that he had communicated the Committee's decision to Mr. Joinet, the Chairman of the Sub-Commission. He recalled that the members of the Committee would be completely free to speak on subjects of interest to them, in particular on new forms of racial discrimination and conflicts of rights, provided they did not exceed their speaking time.

48. Mr. GARVALOV said he would have preferred two joint meetings and wondered what could be expected from a single meeting of three hours. He agreed with the Chairman that the agenda should not be too rigid. The Chairman might indicate in his preliminary statement how the Committee assessed the efforts made at international level to combat racial discrimination and whether he considered that any progress had been made in that area. The Chairmen of the Committee and of the Sub-Commission could draw lots to decide who would chair the meeting first.

49. The CHAIRMAN suggested that consideration of the agenda item should be suspended.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Seventh and eighth periodic reports of Mexico (CERD/C/194/Add.1) (continued)

At the invitation of the Chairman, Mr. Vargas and Mr. Ruiz (Mexico) took places at the Committee table.

50. Mr. VARGAS (Mexico) thanked the members of the Committee, who had acknowledged the efforts made by Mexico to reduce inequality and guarantee the respect of indigenous peoples and communities and shown understanding of the problems Mexico was facing, which were linked to its past history. Admittedly, poverty was much more widespread in the indigenous communities, and he recalled, in that regard, that the Government had set up on 7 April 1989 the National Commission of Justice for Indigenous Peoples in consultation with indigenous persons and representatives of indigenous organizations.

51. He also thanked the country rapporteur, Mr. de Gouttes, for his analysis of the reports of Mexico, which showed the importance the Committee attached to those documents. The next report would be in keeping with the Committee's guidelines on the presentation of reports. He would transmit the comments made by Mr. de Gouttes to the authorities in his country so as to ensure that the first part of the next report contained data on Mexico's economic, social, political, cultural and demographic situation.

52. Turning to part II of the report, in particular the legislative measures adopted on behalf of poorer communities, he said that, by virtue of article 146 of the Federal Code of Penal Procedure, all courts hearing a case must verify whether the accused was a member of an ethnic group and, if so, what its customs and characteristics were. The National Institute for Indigenous Affairs (INI) had a directory listing 160 translators that it made available to the Attorney-General of the Republic and 69 lawyers who worked with the Government Procurator's office. The legislative reforms that had entered into force on 1 February 1991 had provided that indigenous persons who did not speak Spanish had the right to the services of an interpreter and that

the court must take into account the customs, languages, values, legal traditions, social practices and geographic situation of indigenous persons implicated in a case. Thanks to those reforms, 2,500 indigenous prisoners had been granted early release. The objectives of the Justice Programme for Indigenous Peoples were close to being met following an agreement concluded in July 1991 between the Attorney-General of the Republic and the National Institute for Indigenous Affairs for the purpose of helping indigenous citizens who were under investigation or on trial. Indigenous prisoners accounted for approximately 7 per cent of the total prison population.

53. Mexico's National Commission of Justice for Indigenous Peoples gave its support to a programme of justice in which the National Solidarity Programme and the National Institute for Indigenous Affairs participated, as did the offices of the Government Procurator at state and Federal District levels and the National Human Rights Commission, which were in charge of coordinating activities.

54. Concerning the agrarian question in the States of Oaxaca and Chiapas, he was aware that Amnesty International had published three reports in 1985, 1989 and 1990 focusing on land disputes between communities in those regions. The publications suggested that the authorities were ignoring certain situations that might constitute human rights violations. At the crux of the issue was the question of agrarian law and the social pressure exerted by certain groups to obtain land. Concerned at the situation, the Government had instructed the National Human Rights Commission and the National Institute for Indigenous Affairs to examine the matter. Information on pilot projects undertaken in the States of Oaxaca and Veracruz was provided in the Commission's biannual report, which had been sent to the Centre for Human Rights. In February 1991, the National Human Rights Commission had prepared a programme for indigenous communities, and members of the Commission's personnel had gone to the States of Puebla and Oaxaca to inform the indigenous communities of their basic rights and to hear complaints. The problems raised were complex ones, concerning for the most part agrarian, penal and municipal questions. In view of its importance, he would ask his Government to provide more information on the subject in the next report to the Committee.

55. As for the composition of the Board of the National Human Rights Commission, he said that, under article 6 of the decree setting up the Commission, the Board was made up of prominent citizens chosen by the Executive. The Board was a collegial body that monitored respect for and defence of human rights both in the country and for Mexicans living abroad, proposing guidelines on the subject to the Chairman of the Commission. To perform its duties, the Board had a Technical Secretary appointed by the President of the Republic. Its members sat for three years, their mandate being renewable. The Board currently consisted of two university rectors, the President of the Mexican Human Rights Academy, an independent journalist, the former General Coordinator of the Mexican Refugee Aid Commission, a Mexican writer of international repute, the chief editor of a major Mexican daily newspaper and two representatives from the most vulnerable sectors of the Mexican economy: the peasants and indigenous peoples. The Commission was responsible for protecting the interests of all segments of the population. It also worked with the National Institute for Indigenous Affairs in a number of areas of common interest to ensure, in particular, that complaints of human rights violations were lodged with the Institute's delegations.

56. Replying to a question by Mr. de Gouttes on the legal force of the Commission's decisions, he indicated that the recommendations of that body were not enforceable, but were usually followed: of 95 recommendations made, only 9 had remained dead letters.

57. Concerning the competence of the Commission, its main task was to monitor respect for and defence of human rights. In accordance with article 22 of its rules of procedure, it could investigate, on its own initiative or in response to a lodged complaint, to determine whether the basic rights of Mexicans living in the country or, consistent with international law and in cooperation with the Ministry of Foreign Affairs, of those living abroad had been violated. It also informed individuals of the means of legal redress open to them, but it was not competent to investigate offences committed by individuals, which came under the jurisdiction of the ordinary courts.

58. Concerning article 4 of the Convention and the criticism levelled against the Mexican Government by the Committee regarding the absence in the national legislation of precise provisions declaring all acts of racism to be illegal, he recalled the arguments put forward in paragraphs 68 to 78 of the report, from which it was apparent that, even if they were not expressly defined as offences, such acts did, in fact, fall within the scope of the law, because every person (regardless of race) enjoyed the guarantees granted by the Constitution (art. 1) and because article 364 of the Federal Penal Code provided that anyone who in any way violated the individual rights and guarantees established by the Constitution was to be punished by a penalty of imprisonment and a fine.

59. It should be noted in that context that, to date, no complaint of racial discrimination had ever been lodged with the courts or the National Human Rights Commission. Likewise, over the past five years, not a single allegation had been made against Mexico in international bodies.

60. Indigenous groups had indeed complained about the difficulties they encountered in protecting their rights as a result of the cost of legal services and language problems, and the authorities had looked at the problem and had adopted a number of measures to remedy the situation.

61. Lastly, if Mexico had never felt the need to legislate in the area of racial discrimination, it was no doubt because some 90 per cent of the population was of mixed ethnic background and had deep indigenous roots. If Mexicans denied their indigenous side, they would be denying a good part of themselves; and for that reason, they did not regard the question of racial discrimination from the same angle as English-speaking persons or Europeans: it would never occur to them, for instance, to refuse to employ a person for reasons of race.

62. Replying to a question by Mr. de Gouttes about article 133 of the Constitution (para. 77 of the report), he said that the international treaties ratified by the Senate had the value of supreme law, provided they contained no provision contrary to the Constitution. Such treaties were therefore enforceable throughout the national territory and could be invoked in the courts, particularly in criminal cases.

63. With regard to the number of indigenous persons employed in the public sector or in the Ministry of Foreign Affairs, he said that Mexico considered the classification of citizens by race, ethnic group or religion to be a discriminatory practice. To be employed in the public sector or in diplomacy, it was sufficient to be a Mexican and to have the necessary competence. He recalled, in that context, that one of the most illustrious figures of Mexican history, Don Benito Juárez, had been of indigenous origin. There were no statistics on inter-ethnic marriages either.

64. As for the flight from the land, 548,000 indigenous persons (10.6 per cent of the total) had been counted in 1980 in areas other than their region of origin. They moved primarily to the big cities and, in particular, to the greater metropolitan area of Mexico City (306,000 indigenous inhabitants and 40 indigenous languages), to Guadalajara (28,000), Monterrey (24,000) and the cities along the northern border (47,000).

65. Even if there were no exact figures as yet for the 1980s, it seemed clear that the capital was attracting more and more indigenous persons. A total of 69.9 per cent of the indigenous population lived in rural communities and 18.1 per cent in urban areas.

66. No exact statistics were available on the number of applications for amparo instituted by peasants; it was simply known that there were many such cases. In its next report, the Mexican Government would attempt to provide the Committee with detailed statistics.

67. Although the amparo proceedings could be instituted only by a private individual (para. 113 (b) of the report), nothing prevented a group from instituting such proceedings, provided that each of its members did so on his own behalf.

68. Concerning illiteracy, he said that 8 per cent of Mexicans above the age of 15 were illiterate.

69. With regard to the question whether the Mexican Government intended to expand a television network to regions with large indigenous populations, he said that the authorities preferred to focus on health and education programmes, especially as the existing radio programmes were adequate to meet the minimum needs for information, culture and leisure of those social groups.

70. Responding to Mr. Banton's question on the criteria used by the Government to measure the success or otherwise of reforms in the penal sector, he replied that the statistics were a good indicator. At the time the eighth periodic report was being drafted, there had been 9,000 indigenous persons in the prison population (para. 22 of the report). As they numbered only 6,500 at the current date, it was fair to say that the reform of the Federal Code of Penal Procedure had borne fruit.

71. Indigenous persons could exercise the professions of policeman, magistrate or judge; when the Federal Code of Penal Procedure had been amended, the members of those professions had been alerted to the rights of indigenous persons, and their attention had been drawn, in particular, to articles 146 and 223 of the Code.

indigenous persons, and their attention had been drawn, in particular, to articles 146 and 223 of the Code.

72. In reply to Mr. Banton's question whether the persons who had not been judged within the time-limit provided by the Constitution should be released, he said that within the space of one year, the National Human Rights Commission had issued recommendations on seven occasions calling upon the judges hearing those cases to speed up the proceedings and to pass sentence as soon as possible (see paras. 39-46 of the report).

73. As to demographic growth, he said that the indigenous population was growing at a rate of 2.9 per cent per year, as compared with to 2.3 per cent for the rest of the population.

74. The Mexican delegation had taken due note of certain statements made in Japan, when it had been announced in September 1986 that an oil pipeline was to be laid on the isthmus of Tehuantepec. The Mexican delegation was not in a position to confirm or deny the statements made by a Mexican official concerning a project that had not been realized.

75. Replying to a question by Mr. Ferrero Costa, he said that the Executive appointed officials entrusted with carrying out the National Solidarity Programme and that they, in their turn, designated leaders who were in contact with civil society and who were chosen from all social sectors in a non-partisan spirit.

76. Mexico planned to make the declaration provided for in article 14 of the Convention.

77. Replying to a question by Mrs. Sadiq Ali, he said that the vast majority of imprisoned indigenous persons were charged with having participated in one form or another in drug trafficking. Most of them had been employed to plant or harvest marijuana or to guard cannabis plantations. The agreement concluded between the National Institute for Indigenous Affairs and the offices of the Attorney-General of the Republic should make it possible to review the cases of those indigenous persons and to speed up the proceedings. The National Human Rights Commission had visited the State of Oaxaca and asked the judge to ensure that the rights of the detainees were respected and the proceedings expedited.

78. The Commission had issued recommendations for punishing members of the police and security forces that committed torture. Several policemen had been prosecuted for such acts.

79. As part of their fight against drug trafficking, the Attorney-General of the Republic was currently setting up a programme to train young police officers and to make them aware of the rights of detainees.

80. Putting an end to the corruption that reigned in the police force and the prison administration was a priority goal of the National Human Rights Commission. To that end, it visited prisons unannounced in order to see whether abuses were being committed. The Commission hoped that the effects of those programmes would make themselves felt within two or three years.

81. Replying to a question by Mr. Yutzis on agrarian problems, he said that the President of the Republic took into consideration the legal customs of the autonomous peoples and that the National Institute for Indigenous Affairs was seeking to bring about a change of attitudes in the various ministries that dealt with such questions.

82. The National Institute for Indigenous Affairs sought to take into account the legal customs of the indigenous peoples so that they could participate in the decision-making process with respect to matters concerning them and so that their democratic aspirations could be recognized.

83. In answer to a question by Mr. Song Shuhua on the defence of the interests of the poor, he said that the National Solidarity Programme had been launched to help the part of the population that lived in extreme poverty. At the judicial level, the National Human Rights Commission saw to it that the rights of the poorest sectors of society, and in particular of the indigenous population, were respected. The Department of Agrarian Reform was also implementing, in collaboration with the National Solidarity Programme, an emergency plan to eliminate bureaucracy and passive attitudes in the peasant organizations. He noted in passing that indigenous persons were not interested in the acquisition of new land, but in the regularization of tenure for the land they were already working.

84. Concerning the question whether autonomous persons were treated differently from the rest of the Mexican population, he referred Mr. Song Shuhua to the message delivered by the President of the Mexican Republic when he had presented the amendment to the Constitution.

85. Replying to a question by Mr. Shahi, he said that, if a person were found guilty of racial discrimination, which had never yet happened, he would be subject to the penalty provided under article 364.2 of the Federal Penal Code for having violated the rights and guarantees enshrined in the Constitution. In conclusion, he asked the members of the Committee to send him in writing any additional questions they might wish to ask and assured them that they would be answered in the next report of Mexico. He thanked the members of the Committee for the attention they had given to the report of Mexico.

86. Mr. de GOUTTES said he was pleased that Mexico had presented its report on time and commended the Mexican delegation for its very satisfactory replies, not only to the questions asked during the current session, but also to those raised at the previous session. He was also pleased that Mexico planned to make the declaration provided for in article 14 of the Convention.

87. Economic and social disparities existed in Mexico between various categories of the population, and that was at the heart of serious discrimination, which must be remedied, even if it was not directly racist in nature. The Mexican Government had embarked upon that task, since it had undertaken numerous reforms to help indigenous persons, peasants and the poorest social categories.

88. He was certain that, when preparing its next report, the Mexican Government would take the Committee's guidelines into greater account. He regretted, however, that Mexico had not changed its position with regard to its interpretation of article 4 of the Convention.

89. In conclusion, he thanked the Mexican delegation for its spirit of dialogue.

90. The CHAIRMAN thanked the Mexican delegation for its presentation of the report and thanked Mr. Vargas for his oral introduction and for the clarifications he had just provided.

Mr. Vargas and Mr. Ruiz (Mexico) withdrew.

The meeting rose at 1.05 p.m.

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21 August 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 932nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Second Decade to Combat Racism and Racial Discrimination (continued)

Preparation for the joint meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of Racial Discrimination (continued)

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Seventh and eighth periodic reports of Mexico (concluded)

Ninth to eleventh periodic reports of the Syrian Arab Republic

Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention (continued)

Other business

The meeting was called to order at 3.10 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6) (continued)

Preparation for the joint meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of Racial Discrimination (continued)

1. The CHAIRMAN recalled that, at the 900th meeting on 12 March 1991, the Committee had decided that Mr. Ferrero Costa would be responsible for liaison with the Sub-Commission.

2. Mr. BANTON suggested that the Chairman should introduce Mr. Ferrero Costa to the Sub-Commission as the Committee's liaison officer and ascertain whether the Sub-Commission had appointed a counterpart. The Committee should resist the establishment of a working group; the liaison officers could serve that function and, if required, their numbers could be increased. It would be more effective if communications between the two bodies were in writing; oral communications should simply be used to supplement any written material. The Committee should decide what information each of the two bodies would want to have from the other.

3. Mr. YUTZIS said that the very fact that the Committee and the Sub-Commission were holding a joint session for the first time was of symbolic significance. That meeting should have four objectives: to show that the various human rights bodies could coordinate their efforts; to enumerate ways of achieving such coordination; to analyze subjects of common interest; and to draft an agenda for a later meeting.

4. Mr. SONG Shuhua said he agreed on the importance of the first joint meeting, but thought that, owing to time constraints, it would be wise to limit the meeting to an exchange of views.

5. Mr. de GOUTTES said that the difficulties that had arisen in preparing for the joint meeting showed how isolated the two bodies had been. Little time had been allotted for the joint meeting, and it would therefore be a mistake to overload the agenda, which should remain flexible. The impression must be avoided that such meetings were a waste of time; it was important not to compromise the opportunity of instituting periodic meetings. The aim was to ensure coordination and an exchange of information, especially with the non-governmental organizations.

6. Mr. RESHETOV said that, in his view, the meeting would be rewarding for both bodies, and the Sub-Commission would benefit from it even more than the Committee.

7. The CHAIRMAN said that the joint meeting would begin with a brief introduction by the two Chairmen and by statements lasting three or four minutes by those wishing to discuss themes of common interest to the two bodies, ways of promoting a future exchange of information and coordination, particularly with a view to making a contribution to the World Conference on Human Rights and to the common fight against racial discrimination, recent trends in racism and racial discrimination, conflict of rights, such as the

limitations placed upon freedom of expression and freedom of opinion in preventing the propagation of racist doctrines, and, as suggested by the Sub-Commission, the recent upsurge in racism and racial discrimination especially against vulnerable groups. The meeting would end with concluding remarks by the two Chairmen.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Seventh and eighth periodic reports of Mexico (CERD/C/194/Add.1) (concluded)

8. The CHAIRMAN said it had been agreed that the final statement by the country rapporteur, Mr. de Gouttes, at an earlier meeting should be taken as the Committee's evaluation of the report. The Committee had thus concluded its consideration of the eighth periodic report of Mexico.

Ninth to eleventh periodic reports of the Syrian Arab Republic (CERD/C/197/Add.6)

At the invitation of the Chairman, Mr. Masri and Mr. Khoury (Syrian Arab Republic) took places at the Committee table.

9. Mr. MASRI (Syrian Arab Republic), assuring the Committee of his country's continued cooperation with the Committee, whose humanitarian work it respected, said that every effort had been made in drafting the ninth, tenth and eleventh reports to comply with the Committee's guidelines, update previous information and explain the constitutional and legislative provisions adopted to implement the Convention, as well as international efforts in support of action to eliminate all forms of racial discrimination, although he was aware that there was always room for improvement. Successive Syrian Constitutions had guaranteed equality before the law of all citizens, and the Penal Code, particularly article 207, provided that any act of racial discrimination or constituting incitement to or encouragement of such discrimination was punishable by law. There was no form of racial discrimination in Syria. The Constitution provided that freedom was a sacred right and that the State guaranteed the personal freedom and safeguarded the dignity and security of its citizens. The rule of law was a basic principle of society and the State. Citizens were equal before the law in regard to their rights and obligations, and all citizens had the right to participate in the country's political, economic, social and cultural life. All citizens enjoyed their constitutional and other statutory rights and could not be arrested or detained except in accordance with the law. Torture and degrading treatment of all kinds were prohibited and punished. The State guaranteed freedom of belief and the freedom to engage in all forms of religious observance in a manner consistent with public order.

10. Mr. BANTON commended the Syrian Government for reporting regularly and maintaining its dialogue with the Committee. However, its attention should be drawn to the new consolidated guidelines for the initial part of States parties' reports to all human rights treaty monitoring bodies, since a great deal of information, entailing substantial additional work, would be required when States initially reported in accordance with the new guidelines. Thereafter, updating the reports would be less burdensome. It would be helpful to the Committee if the next report were as comprehensive as Syria's

seventh report had been, since the eleventh report left some room for improvement. He hoped that those drafting the next report would also bear in mind the need to describe the country's internal arrangements in such a way as to be comprehensible to readers from all parts of the world.

11. Proceeding by successive articles of the Convention, he said, in connection with article 1, paragraph 1, that it was not clear that all the five protected factors, namely, race, colour, descent, national origin and ethnic origin, were covered by the Syrian legislation, or, if so, by which laws. Even if certain differences were not found in a particular State, there should be preventive legislation. Visitors should be protected as well as citizens.

12. Some States parties arranged for a particular department of Government to be responsible for conducting the reviews provided for in article 2, paragraph 1 (c), for coordinating policy and for preparing reports for the Committee, and he wished to know whether that was the practice in the Syrian Arab Republic. Although there was no obligation on a State to report on how it arranged its internal affairs, some information in that regard would be helpful. In connection with article 2, paragraph 1 (e), he wished to know whether any such integrationist organizations were encouraged, and if so, in what way.

13. The Committee had previously commended Syria's policy in connection with article 3 of the Convention and he was sure would do so again. With regard to article 4, the text of article 207 of the Penal Code provided in the report was helpful. Since it had not been provided in the eighth report, he wondered whether it was new, and wished to know whether the article had ever been invoked before the courts. According to paragraph 5 of the eleventh report, article 4 (b) of the Convention was apparently covered, but it would be helpful to know by which article of the Penal Code. Article 4 (c) was presumably covered by article 207 of the Penal Code. Could it be confirmed that that covered both public authorities and private persons?

14. The provisions of article 5 of the Convention covered the rights of everyone in a reporting State, not just citizens. He wished to know whether, when those rights were recognized, they were available without discrimination. It would appear that article 5 (a) of the Convention was covered by article 25.3 of the Syrian Constitution. To judge by the information provided, it would appear that article 5 (b) of the Convention was not covered, however, and that the question of its availability without discrimination did not, therefore, arise. Was his understanding correct? Articles 5 (c), (d), (e) and (f) appeared to be covered by article 26 of the Constitution, but it was stated that "this right shall be regulated by law". Were there specific laws governing the exercise of the political, economic, social and cultural rights embodied in the Constitution and, if so, did they guarantee availability without discrimination? All the civil rights listed in article 5 (d) of the Convention were recognized in the Constitution, except, apparently, article 5 (d) (ii) on the right to leave and to return. In respect of article 5 (d) (iii), the Syrian Arab Republic exercised preferences similar to those of various other States both in and outside the region. However, information was lacking about trade unions.

15. Article 6 of the Convention was very important to the Committee. The Syrian Arab Republic reported that remedies were available. In some other States remedies were available, but the citizens did not know of them, believed that redress would be expensive, or feared reprisals if they tried to exercise their rights. Some States included in their reports information on inquiries undertaken by independent bodies to enable those interested to assess the effectiveness of the provisions. Did the Syrian Arab Republic have anything of that kind to report? The Syrian authorities had said in the past that the few Kurds who remained had been voluntarily assimilated into the Arab population. Did Kurds - meaning persons of Kurdish ethnic origin - believe that they encountered discrimination, or was nothing known about their views? The representative of the Syrian Arab Republic had just informed the Committee that there was no form of racial discrimination in his country. Such assertions were frequently heard from reporting States, and the Committee had consistently cast doubts on such assertions. Although they were usually made in good faith, the evidence suggested that, even in countries with a pattern of non-discrimination, cases of racial discrimination did occur or might occur in the future with changes in social conditions.

16. On the subject of article 7 of the Convention, he said that the Committee was always pleased to hear about action taken to combat prejudices through educational measures. In conclusion, he regretted that the undertaking given by the Syrian representative presenting the previous report that a detailed reply would be given concerning the transfer to special courts of certain proceedings following the state of emergency appeared to have been overlooked.

17. Mr. de GOUTTES endorsed Mr. Banton's comments, including those about the declared non-existence of racial discrimination. He stressed the difference between the comprehensive seventh report and the report now under consideration, which was too succinct and too categorical in its assertions, providing no specific information about the practical implementation of legislative provisions and thus making it difficult for the Committee to assess the actual situation with regard to the Convention.

18. With regard to article 5 (c) and (d) of the Convention and with reference to the Palestinian community in Syria, he wished to know whether the figure of 250,000 that had been given represented the total number of Palestinians in Syria. Since they were officially regarded as temporary residents, did that mean that the Palestinians could neither vote nor acquire Syrian nationality except by marriage with a male Syrian citizen? Was it true that Palestinians had difficulty in obtaining a visa to travel abroad?

19. Regarding the Jewish community in Syria, he wished to know whether it was true that Jews were excluded from the armed forces and that they were the only minority whose passports and identity cards stated their religion; if so, that would amount to a restriction on their freedom of movement, which was contrary to article 5 (d) of the Convention.

20. Mr. MASRI (Syrian Arab Republic), replying to the Committee's comments and questions and assuring Mr. Banton that his remarks on the preparation and the presentation of the report would be forwarded to the appropriate authorities and taken into account in future reports, confirmed that all groups covered by article 1, paragraph 1, of the Convention enjoyed the same

protection before the law and that no distinction was made in that regard between visitors and residents.

21. With regard to article 2, paragraph 1 (c), of the Convention and the existence of a State body responsible for monitoring and coordinating policy and the implementation of the Convention, all government bodies, within their spheres of competence, were required by law to comply with the provisions of the Convention. With reference to article 2, paragraph 1 (e), of the Convention, there were no integrationist multiracial organizations in Syria, since none was needed, there being no racial discrimination in the country.

22. Article 207 of the Penal Code was not new and was applicable by the courts whenever a case involving racial discrimination was brought before them. To his knowledge, no such cases had ever been brought, since all citizens were equal before the law. Article 4 (b) of the Convention concerning racist propaganda was explicitly covered by article 207 of the Penal Code, as quoted in paragraph 2 of the report (CERD/C/197/Add.6).

23. The provisions of article 5 (b) of the Convention concerning the right to security of person and protection by the State against violence or bodily harm were covered by article 28.3 of the Constitution, which stipulated that it was forbidden to inflict physical or moral torture on any person, or threaten any person with such torture. The law punished such acts of torture.

24. The political, economic, social and cultural rights listed in article 5 (c), (d), (e) and (f) of the Convention were covered and regulated by various laws guaranteeing all such rights. They included particularly the right to leave and to return to the country. With regard to article 5 (e) (ii), the Syrian Arab Republic attached particular importance to the trade union movement, especially for agricultural workers. The constitution of the Arab Baath Socialist Party encouraged the formation of trade unions for workers and farmers. Under article 2 of Legislative Decree No. 44, of 1938, any group of workers in the same occupation, residing in the same prefecture or department, could set up its own union. The Syrian Arab Republic had ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, 1948, and ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and Collectively Bargain, 1949. It was a member of Arab and international trade union associations. The Syrian trade union movement was both well established and progressive.

25. Regarding the situation of the Kurds, there was no such thing as a Kurdish problem in Syria. Kurdish Syrians were fully and willingly integrated into Syrian society and were treated without discrimination. As to article 7 of the Convention, the educational system was based on tolerance and non-discrimination. Children were taught that all citizens were equal before the law, with the same rights and obligations.

26. In answer to Mr. de Gouttes' questions about the Palestinians, it should be remembered that they were refugees, who had been expelled from Palestine following violence, torture and terrorism, and had left their lands and possessions. He could not give their precise number immediately, but would do so later. Their presence in the Syrian Arab Republic, however, was provisional, so that, as guests, they naturally did not participate in

elections. Their Palestinian identity and passports were thus protected. Any Palestinian who wished to travel was able to obtain a special travel document.

27. With regard to the Jewish community, there was no Jewish community as such in Syria. Simply, some Syrian citizens were Jews. Their numbers were obviously not great. They were able to practise any profession they chose and although their movements had been restricted after 1948, that had not been the case since 1976. They were free to travel outside Syria and engage in any form of trade, including the buying and selling of land. They had wide educational opportunities. There were two schools in Damascus specifically for Jews, the Israelite Alliance School, with 208 pupils, of whom 149 were girls, and the ben Maimon School, with 473 pupils, of whom 401 were boys. Jews were also free to attend either private or government schools. There were 36 Jewish students at higher educational establishments in the Syrian Arab Republic, including 12 at Damascus University, in a variety of departments, including medicine, mechanical engineering and pharmacology. Syrian Jews were also studying in Canada, the United States of America and the United Kingdom. They were particularly well represented in medicine, but there were also many in the liberal professions, especially in Damascus. In no sphere were they subjected to differential treatment. It was incorrect that their passports indicated that they were Jews. On the other points raised in connection with article 5 (c), (d), (e) and (f), he would provide information at a later date.

28. Mr. BANTON said that there was no need for further information before the submission of the twelfth report. He reminded the Syrian representative, however, that he had given no reply about whether Jews were subject to military service. Nor had anything been said about the current state of emergency in the Syrian Arab Republic. During the discussion of the previous report there had been some debate as to whether that situation was relevant to racial discrimination. If the Committee were given more information, it would be in a better position to judge whether that was so.

29. Mr. MASRI (Syrian Arab Republic) said that he was not sure about the first point. He believed that Jews were exempt from military service, not on discriminatory grounds, but for other reasons. On the second point, there had been a state of emergency in the Syrian Arab Republic since 1948 because of the existence of a state of war. That, however, did not restrict the rights of citizens.

30. Mr. ABOUL-NASR, said that he had learnt much from the answers given by the Syrian delegation, particularly with regard to the number of Jews in the country and the opportunities open to them. He pointed out that a state of emergency did not contravene the Convention unless it involved differentiation between citizens on the ground of race or restricted citizens' rights. The Palestinians lacked Syrian passports and a nationality - and consequently voting rights - because they themselves refused to give up their own nationality, since they intended to return to their homeland. They resisted resettlement; even when refugee camps were first established for them, the United Nations had found difficulty in persuading them to leave the camps for resettlement. Their rejection of Syrian nationality was of their own free will.

31. The CHAIRMAN, said he hoped that in its twelfth report, the Government of the Syrian Arab Republic would comply with those of the Committee's requests which had not been dealt with at the current session.

32. Mr. MASRI (Syrian Arab Republic), said that his country would cooperate fully with the Committee and would clarify all the points that had been raised.

Mr. Masri and Mr. Khoury (Syrian Arab Republic) withdrew.

33. Mr. BANTON, country rapporteur, said that the Committee's general conclusion on the Syrian Arab Republic's report would read as follows: "The Committee recorded its appreciation of Syria's maintenance of dialogue with the Committee. It noted certain gaps in the information supplied, and welcomed the assurance that these would be remedied in the twelfth periodic report, which would be more comprehensive in character."

34. The CHAIRMAN said that the Committee had concluded its consideration of the report of the Syrian Arab Republic.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 5) (continued)*

35. Mrs. SADIQ ALI, speaking as chairman of the convenors of the three working groups set up to examine the documentation submitted to the Committee under article 15 of the Convention, drew attention to a document circulated to members, containing a draft text for inclusion in the Committee's report.

36. Mr. BANTON, referring to the section of the text on Atlantic Ocean and Caribbean Territories, including Gibraltar, said that more satisfactory replies to the issues mentioned could perhaps have been elicited under article 9, and that, in general, he queried the usefulness of the article 15 procedure. As he understood it, the Committee's position was that it was entitled to seek information regarding a Non-Self-Governing Territory from that Territory's Administering Authority.

37. The CHAIRMAN said he agreed that the procedure under article 15 left much to be desired, and that it might be possible to seek information on Trust and Non-Self-Governing Territories within the framework of the country reports required under article 9. He believed that article 15 was not unduly restrictive in that regard.

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* Resumed from the 924th meeting.

38. Mr. AHMADU, referring to the section of the document on African Territories pointed out that Western Sahara was not universally regarded as an independent country, although it had been admitted to membership of the Organization of African Unity. Nor was it wholly occupied by Morocco, so that its status in relation to article 15 was ambiguous. Morocco had recently decided to attack the camps occupied by the Saharawi people, and had prevented United Nations personnel from entering those areas to prepare for the proposed referendum. The statement in the text was perhaps inapposite in view of those developments.

39. The CHAIRMAN suggested that the working group on African Territories might meet to review the situation in Western Sahara, and that a decision on the report could be deferred until the working group had met.

OTHER BUSINESS

40. Mr. ABOUL-NASR said, in connection with the press release covering the Committee's 930th meeting (RD/323), that the account it gave of the Committee's proceedings was misleading. It should have made it clear that the members of the Committee had not merely asked questions but had made comments on the Israeli report: the press release dwelt unduly on the replies of the Israeli representative.

41. Mr. de GOUTTES said that he agreed with Mr. Aboul-Nasr, but that he acknowledged the difficulty of producing reliable press releases quickly on the basis of statements which were not always ideally clear. In that connection, he noted that the French and English versions of the press release for the afternoon meeting on 9 August (RD/315) differed widely, and that the latter version was distinctly more reliable.

42. The CHAIRMAN said that the French and English press releases were written by different persons, and that in the cases just mentioned, revised versions could be issued.

43. Mr. WOLFRUM said it should be a rule that the Committee's general conclusions on a country's report were quoted verbatim in the press release.

The meeting rose at 5.35 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 933rd MEETING*

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1991, at 10 a.m.

Chairmen: Mr. JOINET
Mr. SHAHI

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* Joint meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of Racial Discrimination.

The meeting was called to order at 10.15 a.m.

Mr. Joinet, (Chairman of the Sub-Commission) took the Chair.

OPENING OF THE JOINT MEETING

1. The CHAIRMAN, in conformity with resolution 1990/1 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, declared open the joint meeting of the Sub-Commission and the Committee on the Elimination of Racial Discrimination. On behalf of the Sub-Commission, he welcomed the members of the Committee and the Under-Secretary-General for Human Rights, Mr. Martenson, whom he invited to make a few introductory remarks.

INTRODUCTORY REMARKS BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

2. Mr. MARTENSON (Under-Secretary-General for Human Rights) congratulated the members of the Sub-Commission and the Committee on having organized the joint meeting, which would undoubtedly constitute an important step in the campaign against racism and racial discrimination through the exchange of experience, preoccupations and points of view.

3. Racial discrimination was one of the oldest and most difficult challenges to the international community. Moreover, new and deeply disturbing manifestations of discrimination were emerging which were a serious threat to international peace and security. Thus a key element in future activities would be a better understanding of the basic causes of racial discrimination and increased knowledge of successful measures used against it.

4. The Sub-Commission and the Committee on the Elimination of Racial Discrimination were the two principal organs of the United Nations in its campaign against racial discrimination. Each had its own specific mandate and methods of work, each saw the various problems from a different angle and each made a unique contribution to the elimination of racial discrimination. The purpose of the meeting was to enable them to exchange the knowledge and experience they had accumulated in carrying out their respective tasks.

5. The current meeting of two expert bodies was part of a general evolution towards closer cooperation of the expert human rights bodies among themselves and with other sectors of the United Nations. Such closer cooperation was necessary if they were effectively to reach their common goals.

6. The treaty-based bodies had taken some initiatives in that area. In particular, they had appointed members to follow and report on other committees and suggested a joint meeting on the rights of the child. The periodic meetings of chairpersons of treaty-based bodies was important in that regard.

7. For its part, the Centre for Human Rights had also made contributions to a wider understanding of problems dealt with by the committees.

8. In connection with the preparations for the Committee on the Rights of the Child, two consultations had been convened, one with the specialized agencies and United Nations bodies, including the Special Rapporteur on the Sale of Children and the Chairperson of the Working Group on Contemporary

Forms of Slavery, and one with the non-governmental organizations. In addition, with the support of UNICEF, the Centre had organized an informal meeting of the newly-elected Committee members, with the participation of a member of the Human Rights Committee and a member of the Committee on Economic, Social and Cultural Rights and representatives of specialized agencies. Those meetings had proved extremely useful in defining the task to be taken up by the Committee on the Rights of the Child.

9. He was certain that the joint meeting represented an important new form of contact which would strengthen the campaign against racism and racial discrimination.

PRESENTATION BY THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

10. The CHAIRMAN, speaking as Chairman of the Sub-Commission, recalled that the Sub-Commission was a subsidiary organ of the Commission on Human Rights, established under Economic and Social Council resolution 9 (II) of 21 June 1946.

11. The Sub-Commission's mandate was to undertake studies and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. It was also responsible for performing any other functions which might be entrusted to it by the Economic and Social Council or the Commission on Human Rights.

12. It was made up of 26 members and 26 alternates elected by the Commission on Human Rights for a four-year term, according to an equitable geographic distribution. The experts served in their personal capacities, and their independence was assured by a number of guarantees, including the quite recent possibility of voting by secret ballot on the human rights situation in a particular country.

13. The work was conducted by a five-member bureau (one chairman, three vice-chairmen and one rapporteur) elected at each session by geographical rotation at the rate of one member per region.

14. In addition to the 26 experts (or their alternates), government observers (82 registered in 1990) and non-governmental (NGO) observers (92 registered in 1991) also participated in the work, with the right to speak.

15. Regarding the discussions, the NGOs usually spoke first, on each agenda item, subject to flexibility in the conduct of the work, thus enabling the government observers to take the floor with better information or even to exercise their right of reply. The members of the Sub-Commission had priority over all observers and could ask to be entered on the speakers' list at any time. The speaking time allowed to members of the Sub-Commission, government observers and non-governmental observers was regulated quite precisely.

16. In conclusion, he asked the members of the Sub-Commission and the Committee who wished to take the floor to enter their names on two separate lists so that the floor might alternate between a member of the Committee and

a member of the Sub-Commission. Given the large number of participants, he also asked the speakers to limit their time to three minutes, if possible.

PRESENTATION BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

17. Mr. SHAHI (Chairman, Committee on the Elimination of Racial Discrimination) said that he had great pleasure in presiding, together with Mr. Joinet, over the first joint meeting of the two United Nations bodies dedicated to combating all forms of racism and racial discrimination. The meeting was an important first step towards better cooperation between the two bodies; it was to the Sub-Commission's credit that it had taken the initiative in proposing the meeting.

18. He welcomed the presence of the observers from the non-governmental organizations, which were valuable sources of information, and regretted that it had not proved possible to allow them to take part in the discussions at the current meeting.

19. The mandate and functions of the Committee on the Elimination of Racial Discrimination were set forth in Fact Sheet No. 12, published by the Centre for Human Rights. In addition, a progress report covering the Committee's first 20 years was currently being printed. It contained an overview of the positive results achieved and difficulties encountered in the implementation of the Convention.

20. The States parties to the Convention pledged themselves to eliminate racial discrimination, not to engage in discriminatory acts against persons, groups of persons or institutions, not to sponsor, defend or support racial discrimination by any persons or organizations and to bring their policies and laws into conformity with that pledge (art. 2 of the Convention). They also pledged themselves to adopt measures, including legislation, to punish, inter alia, incitement to racial discrimination and acts of violence, to guarantee equality of persons before the law irrespective of their race, colour, national or ethnic origin and to assure protection and remedies against acts of racial discrimination. The States parties were also to take action in the fields of education, teaching, culture and information to combat prejudice and to promote understanding, tolerance and friendship.

21. The Committee, which consisted of 18 experts elected by the States parties, monitored States' implementation of those measures by considering the reports the States had undertaken to submit every two years on the legislative, judicial, administrative or other measures they had adopted to give effect to the provisions of the Convention (art. 9 (1)).

22. The Committee found itself confronted with a number of difficulties in carrying out its task. Many States submitted their reports late or did not follow the Committee's guidelines concerning the form and content of those reports. In many cases, the information provided, particularly demographic data, was insufficient. Many States had not yet enacted laws prohibiting acts of racial discrimination and racist propaganda. It was rare for the victims of racial discrimination to obtain redress through recourse procedures.

23. States parties did not always take the special measures provided for in article 2 (2) of the Convention to ensure the adequate development and

protection of certain racial groups, indigenous peoples, minorities and other disadvantaged groups.

24. So far, 14 States had recognized the competence of the Committee to consider communications by individuals within their jurisdiction claiming to be victims of a violation by those States parties of any of the rights set forth in the Convention.

25. He welcomed South Africa's progressive dismantling of apartheid, against which the Committee had maintained an uncompromising stand.

26. With a view to exercising moral suasion on States parties whose periodic reports had become long overdue, the Committee had, in 1991, decided to review the last reports submitted by those States and to comment on subsequent developments.

27. The Convention, ratified by 129 States, was the most widely accepted human rights instrument. However, the delay in payment of contributions by a number of States parties had seriously weakened the functioning of the Committee in recent years. If the effective functioning of the Committee was to be assured, the system of funding meetings from voluntary contributions would have to be reviewed.

IDENTIFICATION OF SUBJECTS OF COMMON INTEREST - HOW TO ENSURE COORDINATION, IN PARTICULAR FOR THE EXCHANGE OF INFORMATION ON THE FIGHT AGAINST DISCRIMINATION AND, POSSIBLY, TO CONSIDER A JOINT CONTRIBUTION TO THE PREPARATIONS FOR THE WORLD CONFERENCE ON HUMAN RIGHTS, INCLUDING THE ESTABLISHMENT OF A JOINT WORKING GROUP

28. Mr. SHAHI (Chairman of the Committee) said that cooperation between the Sub-Commission and the Committee should be developed, despite the fact that the two bodies had different mandates. The Sub-Commission was a standard-setting body, while the Committee was primarily a treaty implementation mechanism. Mr. Alston rightfully stated in paragraph 9 of his report (A/44/668) that, "while each treaty regime must be considered on its own merits and in the light of its own specific norms and procedures, for some purposes the various regimes cannot realistically be viewed in isolation either from one another or from the broader human rights programme of which they are but a part". The chairpersons of the treaty bodies had expressed a similar point of view at their second meeting.

29. The Committee was directly interested in several of the activities undertaken by the Commission and the Sub-Commission, in particular the drafting of declarations on the rights of persons belonging to national, ethnic and religious minorities and on the rights of indigenous populations, and Mr. Joinet's and Mr. Turk's revised study on the right to freedom of information and opinion. That study seemed to run parallel to the one prepared by a Committee member, Mr. Wolfrum, on the prohibition of racial discrimination versus freedom of expression and association. If normative consistency was to be maintained, those three authors should consult one another.

30. The van Boven report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights was of direct

relevance to article 6 of the Convention. Furthermore, the findings of the special rapporteurs appointed by the Commission on Human Rights to inquire into human rights violations in a number of countries might usefully be consulted by Committee members when they were considering the periodic reports of the States in question. The Committee would also welcome the information to be obtained from the "Global Survey on the extent of dissemination of the Convention on the Elimination of All Forms of Racial Discrimination", which the Commission had chosen as its thematic study for 1993.

31. In connection with the proclamation of the Third Decade to Combat Racism and Racial Discrimination, the Sub-Commission would be considering at its current session an overview prepared by the Secretary-General of new trends of racism, discrimination, intolerance and xenophobia affecting ethnic, national, religious and linguistic minorities, refugees, migrant workers and other vulnerable groups. That study was of great interest to the Committee, which was also planning a contribution to the Third Decade by preparing, at the initiative of one of its members, Mr. Banton, studies on a number of articles of the Convention, in particular article 2, paragraph 2, which called for the States parties to take special and concrete measures in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

32. The Committee was also planning a contribution to the World Conference on Human Rights dealing with ways of improving implementation of human rights treaty provisions.

33. At its thirty-ninth session, in March 1991, the Committee had designated a Vice-Chairman of its Bureau, Mr. Ferrero Costa, to maintain liaison with the Sub-Commission and to apprise the Committee of the Sub-Commission's work on a regular basis. The Committee would welcome the nomination of one of the members of the Sub-Commission to communicate with Mr. Ferrero Costa for the purpose of strengthening coordination between the two bodies.

34. The CHAIRMAN reminded the members of the Sub-Commission and of the Committee on the Elimination of Racial Discrimination that the discussion should not deal with matters of substance but should identify subjects of interest to both bodies.

35. Mrs. WARZAZI (Sub-Commission) thanked Mr. Shahi for his statement on behalf of the Committee on the Elimination of Racial Discrimination and welcomed the fact that, since 1975, when she had left the Committee, on which she had served for five years, that body had considerably enlarged the scope of its activities.

36. She hoped that, in the future, Sub-Commission studies would be systematically made available to the members of the Committee and that the two bodies would delve further into the question of compatibility between the provisions of article 4 of the Convention and the right to freedom of expression as defined in the International Covenant on Civil and Political Rights.

37. Referring to the items in the agenda of the Sub-Commission implicitly or explicitly related to the Committee's mandate, she noted that items 13 (Elimination of all forms of intolerance and of discrimination based on religion or belief), 19 (The right of everyone to leave any country, including his own, and to return to his country) and 7 (a) (The role and equal participation of women in development) did not really concern the Committee, unless, of course, the rights in question were violated for reasons based on race.

38. Mr. RIVAS POSADA (Sub-Commission) said he agreed with Mrs. Warzazi that the Sub-Commission and the Committee should concentrate on a more limited number of items initially. He proposed that the two bodies should consider only items 5 (Elimination of racial discrimination), 6 (Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories ...), 15 (Discrimination against indigenous peoples) and 18 (Protection of minorities). The other items might be examined at a later stage.

39. He proposed, as Mr. Shahi had suggested, that the Sub-Commission should nominate one of its experts to ensure liaison with the Committee, and hoped that the meeting would be the first stage in a fruitful collaboration between the two bodies.

Mr. SHAHI (Chairman of the Committee) took the Chair.

40. Mr. FERRERO COSTA (Vice-Chairman of the Committee) said he welcomed the opportunity for the members of the Sub-Commission and the Committee to have an initial contact which would undoubtedly lead to a fruitful collaboration.

41. Each of the bodies was composed of independent experts responsible for defending and promoting human rights, and both, the Committee exclusively and the Sub-Commission among other tasks, had the mandate of combating racial discrimination.

42. An indispensable first stage would be to develop the exchange of information and studies of common interest. For example, the summary records of the Committee's discussions, and its final conclusions when it had considered the reports of the States parties, might be distributed to the members of the Sub-Commission.

43. Greater use should also be made of the information provided by the non-governmental organizations, which played a very important role in the defence of human rights.

44. In conclusion, he proposed that the Sub-Commission document on measures to combat racism and racial discrimination should be used as the starting point for the discussion.

45. Mr. YUTZIS (Committee) said that the joint meeting opened many opportunities for collaboration between the two bodies, in both the practical and theoretical spheres.

46. Among the items on the Sub-Commission's agenda being brought to the attention of the joint meeting, he noted that item 4 was applicable inasmuch as it concerned the right to freedom of opinion and of expression. That subject should be taken in conjunction with the provisions of article 4 of the Convention on the Elimination of All Forms of Racial Discrimination concerning the steps which States might take to combat the dissemination of ideas based on racial hatred. There might be a contradiction there which would give the experts some food for thought.

47. Items 5 and 7 of the Sub-Commission's agenda related to the Committee's work, the first directly and the second more indirectly. Regarding agenda item 18 (Protection of minorities), the outburst of nationalism currently occurring in many modern States was often based on significant religious grounds and gave reason to think that forms of harmonious coexistence between States and their minorities other than those currently existing should be envisaged.

48. Mr. DESPOUY (Sub-Commission) said he welcomed the first meeting between the Sub-Commission and the Committee. He also wished to express his concern at the latest international events, in particular the dismissal of President Gorbachev, which boded ill for the future of human rights and peace throughout the world.

49. With regard to the implementation of article 4 of the Convention by States, he noted the special situation of disabled people and said that States' judicial systems were loathe to grant special remedies to that vulnerable group of the population. He wondered if the Committee had any experience in that area.

50. Regarding the provisions of article 14 of the Convention relating to communications by individuals, he felt that its wording was imprecise, for it might lead States to establish national bodies for receiving petitions from individuals.

51. In connection with the functioning of bodies established under international human rights instruments, he would also like to mention the achievements of the Human Rights Committee and the Committee on the Elimination of Discrimination against Women. In that connection, he welcomed the Committee's decision to invite the NGOs to take part in its work.

52. Concerning cooperation between the two bodies, he recalled that the Sub-Commission had adopted resolutions relating to the holding of Committee sessions. For lack of resources, the Committee had had to cancel certain of its sessions, which had led the Sub-Commission to request the Economic and Social Council and superior bodies to provide the financing required for the continuation of the Committee's work.

53. In conclusion, he endorsed the proposals made by other experts from Latin America and proposed that a permanent consultative mechanism should be established for the proposals to be submitted to the World Conference on Human Rights.

54. Mr. EIDE (Sub-Commission) said that, at the time the Convention on the Elimination of All Forms of Racial Discrimination had been drafted, its main

framework had been the Sub-Commission. There were indeed numerous points of interest common to the Sub-Commission and the Committee.

55. Analysing the concept of racism and its manifestations in different regions of the world was of interest to both the Sub-Commission and the Committee. In that connection, he welcomed Mr. Banton's elaboration of a document relating to the contribution to the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination.

56. He also noted with great interest Mr. Wolfrum's study on the prevention of racial discrimination and its relationship to freedom of expression and freedom of association. Speaking generally, he wondered whether, given the indivisibility of human rights and the conflicts that might arise between different rights, that question could be dealt with effectively by different committees. For example the Human Rights Committee might well interpret and apply articles 19, 20, 21 and 22 of the International Covenant on Civil and Political Rights in a way that was incompatible with the interpretation by the Committee on the Elimination of Racial Discrimination of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. He wondered whether the two bodies communicated with each other on that question and whether Sub-Commission studies, such as the one carried out by Mr. Joinet and Mr. Türk, could help to define the relationship between those different rights. In view of the preparations for the future World Conference, thought might, perhaps, be given to preparing an entirely different implementation mechanism (a standing "super-committee", for example) which would deal with the entire range of human rights, rather than the committees dealing with human rights continuing to proliferate as they had been doing for the past 30 years.

57. Finally, with regard to the question of minorities, he was pleased to hear that the Committee intended to devote a special study to the implementation of article 2, paragraph 2, of the Convention.

58. Mr. LECHUGA HEVIA (Committee) said that the joint meeting gave two United Nations bodies the opportunity for collaboration that might lead to better integration, particularly of information, between the various United Nations bodies.

59. The list of items prepared by the Sub-Commission was a very ambitious one and would be more effective if shortened. In his view, it should be limited to items 6 (Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particlar reference to colonial and other dependent countries and territories) and 7 (The new international economic order and the promotion of human rights).

60. As the Under-Secretary-General for Human Rights had rightly pointed out, the causes of racial discrimination had to be identified if it were to be combated more effectively. The economic crisis was, perhaps, the source of the mass migrations which were occurring, especially towards the developed countries, and which were bringing about a resurgence of discrimination, racism and even neo-fascism in Europe and other regions. It was thus necessary to determine the economic causes of a discrimination that was growing worse in all countries, particularly in Europe. In that connection,

it would be helpful to establish a mechanism for collaboration among the various competent bodies and to request participation by other United Nations bodies with competence in the economic field, such as the regional commissions, the United Nations Conference on Trade and Development and the Economic and Social Council, in order to provide a statistical base and up-to-date information in that field.

61. Regarding mechanisms for studying means of collaboration between the two bodies, he would be in favour of the Sub-Commission's appointing a coordinator, who would be Mr. Ferrero Costa's counterpart, as it were.

62. Mr. GUISSE (Sub-Commission) said that the list of items distributed was indicative rather than imperative.

63. Human rights violations currently had a racial aspect in many countries. Thus, racial discrimination merged into the totality of the violations of individual rights in South Africa.

64. As for cooperation between the Sub-Commission and the Committee, it was being considered on an experimental basis. The first stage would be completed by the date of the World Conference on Human Rights. If the experiment produced results, it should continue until the end of the Decade to Combat Racism and Racial Discrimination, and then until racism as a source of human rights violations was eliminated.

65. Mr. RHENAN SEGURA (Committee) congratulated the Sub-Commission on taking the initiative of organizing the joint meeting. That experience should be repeated, and exchanges among the various bodies should be increased, the more so as there was unjustified criticism of the work of the Sub-Commission and other United Nations bodies for the protection of human rights. As a current member of the Committee and an alternate member of the Sub-Commission for the period 1988-1989, he had often been concerned at the duplication of work among the Committee, the Commission and the Sub-Commission. The Sub-Commission and the Committee should join their efforts to support the various minorities struggling to vindicate their rights, and to eliminate the racism that prevailed in politics and everyday life. The Committee's experts should also be able to collaborate in the studies conducted by the Sub-Commission, in particular the work on items 5 and 6 of its agenda.

66. Mrs. DAES (Sub-Commission) said the joint meeting, whose utility was obvious, should help the two bodies to coordinate their work more effectively, in order to avoid duplication and ensure that the resolutions and studies of one body were not in contradiction with those of the other. Among the items with potential for cooperation, particular mention should be made of discrimination against indigenous peoples (item 15 of the Sub-Commission's agenda), with which she had been concerned. The Sub-Commission and its Working Group on Indigenous Populations would be able to make use of the information received by the Committee in that field, as well as its conclusions and recommendations, to good effect. As for the future, cooperation between the two bodies should be maintained in preparation for the World Conference on Human Rights and, subsequently, the Third Decade.

67. Mr. SHERIFIS (Committee), having thanked the Sub-Commission for its initiative in planning a meeting between the two bodies, noted that the

Committee, whose work was based on the International Convention on the Elimination of All Forms of Racial Discrimination, had a more limited scope of activity than the Sub-Commission. Some of the subjects it dealt with had already been handled by the Sub-Commission; it could therfore take advantage of the latter's work. Thus, when a report by a State party was being considered, it would be useful for the Committee to be informed of any Sub-Commission decisions concerning that State. In other cases, the Committee could supply the Sub-Commission with information. What was important was that there should be an exchange of studies and information on subjects of common interest. To that end, the two bodies should provide each other with a list of items they were considering, indicating what stage had been reached. The participants in the current meeting had before them, in a document without a symbol, a list of items on the Sub-Commission's agenda which were connected with the Committee's mandate. In his view, that list was rather an ambitious one, and he thought that it would be better to strengthen cooperation, at the first stage, on a limited number of items. He was thinking in particular of item 5 (Elimination of racial discrimination), item 6 (Question of the violation of human rights and fundamental freedoms ...) and item 15 (Discrimination against indigenous peoples). Finally, he hoped that the Sub-Commission and the Committee would be able to combine their experience and wisdom in order to help resolve the conflicts throughout the world that fell within their mandates.

68. Mr. van BOVEN (Sub-Commission) said that the two bodies complemented each other. The Committee worked on the basis of its dialogue with Governments; the Sub-Commission was also informed by Governments, which attended its sessions as observers. The Sub-Commission had the advantage of receiving much information from non-governmental organizations, as Mr. Shahi had already said. As for the items concerning which the two bodies could cooperate, he believed that they were numerous and that practically the entire Commission agenda would lend itself to such cooperation. Mr. Shahi had already mentioned an item which he himself was dealing with: the elimination of religious intolerance. He recalled that, when, in 1962, the General Assembly, had originally discussed the International Convention on the Elimination of All Forms of Racial Discrimination, it had also envisaged a parallel convention on religious intolerance. The two aspects were often interconnected, as in anti-Semitism. He would like to see special cooperation between the two bodies in the future on a study of new trends in racism and xenophobia, and more generally an improvement in the exchange of information and documentation, which currently revealed some serious gaps.

69. Mr. de GOUTTES (Committee) said that the joint meeting was an important and welcome initiative. To ensure sound cooperation between the two bodies, it should be repeated regularly. Since many items had already been mentioned by members of the Committee, he would limit himself to one specific item. He had personally proposed to the Committee that national human rights commissions should take part in the drafting of reports by the State parties and even be members of the delegations sent by those States for the consideration of their reports. Such national commissions had direct experience of the campaign against racial discrimination and were in close contact with NGOs, trade-union movements, religious groups, etc., which were working directly in sensitive neighbourhoods and areas. That approach would make it possible to obtain precious information. A meeting of national commissions was planned for October under the auspices of the Centre for Human

Rights. The Sub-Commission and the Committee should cooperate to develop and further that type of contact.

70. Mrs. KSENTINI (Sub-Commission), having thanked the sponsors of the initiative that had led to the current meeting, which represented a step towards closer cooperation between the two bodies, said that the list of items of the Sub-Commission's agenda related to the mandate of the Committee provided many possible areas of cooperation but was not exhaustive. It might be thought that all human rights were affected by racial discrimination and therefore justified cooperation between the two bodies. In particular, item 10 of the Sub-Commission's agenda, concerning the administration of justice, might be added to the proposed list; racism effectively prevented access to a fair judicial hearing. The two bodies could also cooperate with regard to detention, extreme poverty, etc. In fact, rather than agenda items, it would be better to select subjects concerning which mutual information and cooperation were desirable. She recalled that the Committee was empowered to receive complaints from individuals and States; it also had the experience of considering reports by States parties, which often dealt with some very specific questions. The Sub-Commission should draw upon the Committee's experience, especially regarding problems encountered in considering reports and the current trends that were reflected in them. As everyone knew, the Committee examined countries' legislation to verify whether it provided protection against racial discrimination and provided victims with the means to defend themselves.. The Sub-Commission might also make good use of the Committee's general observations. Conversely, as had already been stressed, the copious information received by the Sub-Commission from NGOs would be very useful to the Committee. For all those reasons, she hoped that a consultation mechanism would be set up between the two bodies, especially with a view to the forthcoming World Conference on Human Rights.

71. Mr. ABOUL-NASR (Committee) recalled that Mr. Yutzis, a member of the Committee, had been the first, two years previously, to launch the idea of a joint meeting with the Sub-Commission. At that time, he had not himself been very enthusiastic, but he had come to recognize that the idea had been an excellent one and had led to a very useful discussion. The Committee had developed considerably since its early days: dialogue with the States parties had been strengthened and had contributed to a better understanding with those States and a better implementation of the Convention in the territories under their jurisdiction. It should be remembered that the Committee's sources of information were the country reports submitted to it under article 9 of the Convention, complaints by States under article 11, complaints by individuals under article 14 and reports and petitions concerning the administration of the Non-Self-Governing Territories, as provided for in article 15.

72. In 1991, the Committee had decided to broaden its information sources further, by including non-governmental organizations and the press; information from those sources had not been accepted formerly, and points of order had been raised whenever they were brought up. Since the Sub-Commission had more information sources then the Committee, means should be sought to enable the Committee to make use of them.

73. Regarding potential joint actions between the two bodies, he agreed with Mr. van Boven that a realistic attitude was necessary. The members of the two bodies, after getting to know each other, should initially collaborate on a

few specific items; in that connection, he proposed the penalization of acts of racial discrimination in accordance with article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee had made some progress in that area, but under difficult conditions, for it had had to convince States to make those acts offences by changing their national legislation (some States went so far as to say that there was no racial discrimination in their territories). He also noted that, although article 11 of the Convention enabled a State to charge that another State was violating the provisions of the Convention, and provided a procedure for that purpose, no State had made such a complaint to date. Some filed complaints before the General Assembly or the Commission on Human Rights, but not before the Committee; there were several reasons for that, which he could hardly go into at the current meeting. Article 14 of the Convention enabled the Committee to receive communications from individuals if the States parties made an optional declaration recognizing its competence in that regard; however, there had been very few communications to date. The Committee did not know whether a given State party informed its citizens of that right when it made its declaration under article 14.

74. Concerning studies, he recalled the difference between the two bodies: while the Sub-Commission's studies were financed by the United Nations, the Committee's studies were prepared by its members without any financing. Regarding duplication of work, it was a well-known fact that there were some 10 or so committees dealing with racial discrimination within the United Nations; there was thus an obvious need to avoid overlapping of their work.

75. Mrs. BAUTISTA (Sub-Commission) thanked the Chairmen of the Committee and the Sub-Commission for rendering possible the current historic meeting, thanks to which the experts had been informed of the potential for collaboration between the two bodies to improve the lot of minorities in many regions of the world and of the measures that might be adopted to end ethnic conflicts. The reports prepared by some members of the Sub-Commission, especially Mrs. Daes, Mr. Eide, Mr. van Boven, Mrs. Warzazi, Mrs. Ksentini and Mrs. Attah, on the problem of minorities might be very useful to the Committee which, it seemed, received only the information contained in the reports submitted to it by the States parties. However, she felt that, for the time being, the information exchange between the two bodies should be aimed solely at determining the main causes of conflicts between Governments and minorities and considering the possibility of making a joint recommendation at the World Conference on Human Rights urging States to take measures to resolve conflicts arising from discrimination against minorities. She proposed that a mechanism should be set up for preparing such a joint recommendation.

76. Mr. WOLFRUM (Committee) welcomed the holding of the joint meeting and said that both bodies could benefit from each other's work. The list of items of mutual interest was not exhaustive. and should, in his view, also include judicial and administrative protection against racial discrimination. He also believed that both bodies should make every effort to strengthen the implementation of the international human rights instruments, not only regarding States parties' obligation to submit reports, but also at the level of the individual's right to file complaints against his Government and that of States to denounce other States that did not implement the provisions of the Convention. In that connection, he found it surprising that articles 11

and 14 of the Convention were not invoked more often. Developments in racial discrimination was another subject of mutual interest. In that connection, thanks to the reports submitted to it by Governments, the Committee had reliable information on the situation in the States parties. That having been said, he agreed with Mr. Aboul-Nasr that, for the time being, the two bodies should limit themselves to exchanging information in certain fields.

77. Mr. SABOIA (Sub-Commission) said he welcomed the convening of the joint meeting and thanked the Chairmen of the Committee and the Sub-Commission, as well as Mr. Martenson, for their efforts to make it possible. Although they had different legal bases and mandates, the Committee and the Sub-Commission had many areas of common interest. He believed that the current meeting was part of a trend to promote the consideration of the work of the human rights treaty and statutory bodies. The purpose of such consideration should be to simplify the work and procedures of those organs and make them more efficient, to reduce the workload on States and organizations arising from their obligation to submit reports, and to avoid overlapping of activities. In that connection, he found very interesting Mr. Eide's idea of establishing a "super-committee" to monitor the implementation of the various human rights instruments, at least of the universal instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination.

78. Concerning the list of items of common interest on the Sub-Commission's agenda, he was of the opinion that it should be selective and not exhaustive, so as to avoid any work overload. The most important items, in his view, were item 5 (a), concerning which the Sub-Commission needed greater knowledge of the new forms of racial discrimination, especially with regard to refugees, asylum-seekers and migrant workers, and items 5 (b) and 15. As for the coordination of activities, he proposed that, initially, contacts between the bureaux of the two bodies should be increased. To promote information exchange, he suggested that the Secretariat should draw up an annual list of documents of common interest.

79. Mr. ALFONSO MARTINEZ (Sub-Commission) said he acknowledged the importance of the current joint meeting. In his opinion, items 5, 6, 15 and 18 of the Sub-Commission's agenda lent themselves to cooperation between the two bodies. Regarding item 15, the Committee might communicate to the Sub-Commission the up-to-date information it had on specific subjects and take advantage of the information received by the Sub-Commission from non-governmental organizations. He would like to make it clear that cooperation between the two bodies would not necessarily lead to joint action. He had four areas of cooperation in mind: identification of emerging trends in the field of racial discrimination, coordination of activities in preparation for the forthcoming Decade to Combat Racism and Racial Discrimination, periodic exchange of information on the work of the two bodies the institutionalization of such exchanges and a stepping-up of joint activities. In conclusion, he proposed that a common mechanism should be set up, involving members of both bodies, to examine potential cooperation activities.

80. Mr. ILKAHANAF (Sub-Commission), said that, while he welcomed the fact that the Sub-Commission and the Committee had decided to consider items of mutual interest, the number of areas in which the two bodies could exchange viewpoints and information was limited. In his view, items 4, 5, 6, 7 and 15 of the Sub-Commission's agenda were ones on which the two bodies could

cooperate and complement each other to avoid any overlapping of their activities.

81. Mr. CHERNICHENKO (Sub-Commission) welcomed the fact that the joint meeting was being held. He thought it important to have a common approach to the interpretation of international instruments on racial discrimination, and the only way to achieve it was to exchange information continually. He agreed that one of the most important joint activities was that of developing general criteria for cooperation. The question of bringing both the treaty and non-treaty mechanisms closer together had already been raised, and the current joint meeting was a first step in that direction. A second stage might consist of establishing ongoing contacts between the Chairmen of the Sub-Commission and the Committee.

82. Mr. TREAT (Sub-Commission) said that overlapping of activities, not only between the Committee and the Sub-Commission, but also with other United Nations bodies, had often been a topic of concern. In view of that situation and of the impressive accumulation of documents, he wondered whether a data-processing system should not be set up for all the documentation. That would enable everyone to consult at any time the documents and issues referred to the bodies dealing with subjects of common interest. He hoped that the United Nations would soon consider setting up such a system.

83. Mr. JOINET (Chairman of the Sub-Commission) said that a difficult question had been referred to him: that of "affirmative" discrimination, designed to compensate for inequalities. He wondered whether the Committee had already had to deal with that problem. He did not expect an immediate reply, but would appreciate the experts' looking into the question.

84. Mr. SHAHI (Chairman of the Committee) said he was pleased that the members of the Committee and the Sub-Commission had unanimously recognized the meeting's usefulness and wished more such meetings to be held. That demonstrated the experts' will to strengthen cooperation and the exchange of information between the two bodies.

85. The list of questions of common interest was indicative and not exhaustive. It might also include, in particular, the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities and the remedies provided to victims of racial discrimination by the treaty-monitoring bodies.

86. On behalf of the Committee, he had proposed to the Sub-Commission that it should appoint a representative who would be in contact with Mr. Ferrero Costa, a member of the Committee, so that the two bodies would be regularly informed of each other's work and of the agendas for their respective sessions. For his part, he intended to continue to exchange points of view with the Chairman of the Sub-Commission, on the understanding that no decision would be taken without consulting the respective bureaux. He also mentioned that the Committee had nominated him to represent it in the Preparatory Committee for the World Conference on Human Rights, and welcomed the idea of meeting the representative of the Sub-Commission so that they might examine together which items should be included in the agenda of the Conference. The Committee had already agreed on certain items, of which the members of the Sub-Commission would be informed. The two bodies would thus

have ongoing contact for the purpose of considering what type of relations might be initiated.

87. In conclusion, speaking on behalf of the Committee and in his personal capacity, he thanked the Chairman and the members of the Sub-Commission, for making possible a constructive dialogue between the two bodies.

88. Mr. JOINET (Chairman of the Sub-Commission) said that he would consult the officers of the Sub-Commission to determine how coordination between the two bodies should be structured. He had feared that a meeting between a treaty body and a statutory body might present some difficulties, but the experiment had been a success: agreement had been reached on many items, and the discussion had been a balanced one. He was pleased that the two bodies had been able to work in such good conditions for a common cause: the campaign against racism and racial discrimination.

89. Mr. SHAHI (Chairman of the Committee) thanked Mr. Martenson for his advice and encouragement in preparation for the joint meeting.

90. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the joint meeting had been very useful and assured the Sub-Commission and the Committee of his support in their efforts to organize similar meetings in the future.

91. Mr. JOINET (Chairman of the Sub-Commission) thanked Mr. Martenson for his cooperation and the secretariats of the Committee and the Sub-Commission, which had helped make the joint meeting a success.

CLOSURE OF THE JOINT MEETING

92. The CHAIRMAN declared the joint meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of Racial Discrimination closed.

The meeting rose at 1 p.m.

CERD/C/SR.934
23 August 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 934th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention (concluded)

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Reconsideration of reports of States parties that are overdue (concluded)

Fourth periodic report of the Bahamas (concluded)

Second Decade to Combat Racism and Racial Discrimination (concluded)

Submission of reports by States parties under article 9, paragraph 1, of the Convention

Consideration of communications under article 14 of the Convention

Other business (concluded)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 5) (concluded)*

1. Mrs. SADIQ ALI speaking as convener of the working groups set up under agenda item 5, said that Mr. Amadou had withdrawn his reservation to the text of the draft conclusion circulated at the 932nd meeting, so that the text could be adopted without amendment.

It was so decided.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)*

Draft model report for States parties to the Convention

2. Mr. RHENAN SEGURA said that a working party consisting of Mr. Banton, Mr. Wolfrum and himself had worked on the suggested draft model report for States parties to the Convention, which had been prepared by Mr. Banton and had been circulated to all members of the Committee. When the suggestion had been discussed at the meeting on 12 March 1991, one of the principal doubts expressed concerned the reaction of States parties if they received such a document together with the consolidated guidelines. Mr. Banton had proposed that the model report should first be sent out on an experimental basis with a request for comments. Other members of the Committee, on the other hand, believed that it would be necessary to adopt any such model report formally from the outset. A third possibility, which the working party recommended, was that the Committee should remit the model report to the Centre for Human Rights, which would conduct a training session under the programme of technical assistance, with the request that it should try the model out and report back to the Committee on its experience.

3. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to follow Mr. Rhenan Segura's third suggestion.

It was so agreed.

Communications from States parties

4. The CHAIRMAN said that a communication had been received from Germany asking whether its eleventh report could be submitted with its twelfth report at a later date in order to take sufficient account of the events that had occurred since reunification, in particular, in the new Länder. Kuwait had requested a postponement, given the continuing difficulties it was experiencing in the aftermath of the Iraqi occupation. He suggested that those two requests should be approved.

It was so agreed.

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* Resumed from the 932nd meeting

5. The CHAIRMAN announced that the reports of Greece and Costa Rica had been received.

Reconsideration of reports of States parties that are overdue (concluded)**

Fourth periodic report of the Bahamas (CERD/C/88/Add.2) (concluded)**

6. Mr. BANTON, reverting to the Committee's discussion on the situation in the Bahamas, said that the Committee's general conclusion would read "The Committee regretted that the Bahamas had not responded to its invitation to participate in its meeting and to furnish relevant information. It decided to request the State party to submit the reports due, and wished to draw the attention of the State party to the availability of technical assistance from the United Nations Centre for Human Rights in the preparation of reports of treaty-monitoring bodies."

7. Mr. ABOUL-NASR said that the general conclusion should explain that the failure of the Bahamas to send representatives was largely due to the fact that the country did not have diplomatic representation in Geneva.

8. Mr. WOLFRUM said that the usual practice in such cases was to express regret, if the State party concerned was represented in Geneva, and, if it was not, to use the formula "The Committee regrets that it was impossible to send a representative ...".

9. Mr. BANTON said that he was not certain that practice had been so consistent. It might be better to have a summary paragraph stating that, at its thirty-ninth session, the Committee had discussed the situation in 13 States parties, mentioning that requests for postponement had been received from four of them, that one of those requests had been acceded to, and that of the remainder one had sent a representative to attend the meeting for consideration of its report, while in 11 cases the Committee had proceeded in the absence of a representative of the State party. The Committee could then go on to indicate which of the 11 were represented in Geneva.

10. Mr. AMADOU and Mr. GARVALOV said that excuses for non-attendance should not be offered on behalf of States parties not represented in Geneva.

11. Mr. ABOUL-NASR said that some countries could hardly find the resources to send a representative to the session and it was therefore unfair to expect them to do so.

12. Mr. WOLFRUM said that all the Committee's decisions were taken by consensus, and the issue raised by Mr. Aboul-Nasr had been duly taken into account. In his view, the Committee should not revert to matters on which decisions had already been taken.

13. Mr. LAMPTEY pointed out that the Convention did not require States to send a representative. It was, however, the usual practice and was useful for the purpose of maintaining a dialogue. Mr. Aboul-Nasr's point that some States could not afford to do so was well taken.

** Resumed from the 926th meeting.

14. The CHAIRMAN said he assumed that the text read out by Mr. Banton was acceptable.

It was so agreed.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 6) (concluded)*

15. Mr. FERRERO COSTA, referring to Mr. Banton's paper on model legislation, said that a working group with Mr. Yutzis as convener had met once to discuss the paper, but had agreed that it should hold a further meeting in view of the complexity of the issues involved and that further discussion in the Committee should be postponed until the next session.

16. Mr. ABOUL-NASR said that the paper raised a number of difficult questions which could not be resolved before the next session of the General Assembly. In any case, the topic was not of such urgency as to require immediate action on the part of the Committee.

17. Mr. de GOUTTES suggested that each member of the Committee should be asked for comments on the draft model legislation with a view to further discussion at a later stage.

18. Mr. YUTZIS said that he agreed with the previous speakers and proposed that the matter should be taken up at the next session, but that the working group should meet before the end of the current session in order to discuss the methodology of its approach. Members of the Committee, as Mr. de Gouttes had suggested, should be asked for their comments.

It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 2)

19. The CHAIRMAN recalled that, at the thirty-ninth session, it had been suggested that a special meeting of States parties should be convened during the period 1990-1993 to assess experience gained in implementation of the Convention. In the course of discussion at the thirty-ninth session, it had been pointed out that in any case a meeting of States parties was to be held in January 1992, and thus there would be no need for a special meeting to be convened to discuss that particular point. It had been suggested that the meeting might perhaps be extended for one day for that purpose.

20. Mr. LAMPTEY said that, in view of the changed circumstances, an extension of one day would serve no purpose.

21. The CHAIRMAN said he took it that the Committee wished to drop the request for an extension.

It was so agreed.

22. Mr. ABOUL-NASR said that it would be appropriate for the Committee's report to include a statement of its views on meetings in New York. The Committee should refer to article 15 of the Convention as well as to the request by States parties that the Committee should meet in New York in March and in Geneva in August. Mention might also be made of the fact that not all States had permanent missions in Geneva.

23. Mr. BANTON said that it was not a good time to put Mr. Aboul-Nasr's proposal to the General Assembly, as the outcome of the proposal for a "contingency reserve fund" was still open. If, in March 1992, the Committee was again faced with a large number of States that were late with their reports, some of them also having difficulty in arranging for representation in Geneva, it would then be in a stronger position to present a case for sessions in New York. The Committee might state in its report that it had been in touch with the 13 States parties that were seriously in arrears in submitting reports and that the situation in 11 of these States had been examined without a representative being present, although some of them had diplomatic missions in Geneva. The Committee was aware that there was no obligation on States parties to send a representative and that some States might like to do so, but had difficulty in meeting the costs. At some time in the future, therefore, it might be advisable to schedule a session in New York for the benefit of States that had missions there and could not easily arrange for representation at meetings in Geneva.

24. Mr. LAMPTEY said that he did not agree with Mr. Banton's tactical approach, and endorsed Mr. Aboul-Nasr's comments. The Committee should not prevaricate, but should take a decision as to where it considered its sessions should be held, irrespective of the outcome of the States parties' meeting. He recalled that the decision to hold the Committee's two sessions in Geneva had been taken for financial reasons. He reiterated the view he had expressed on several occasions that holding both sessions in Geneva did not facilitate the Committee's work, either in terms of States parties' reporting, since many of them did not have adequate diplomatic representation in Geneva, or in terms of the publicity given to the Committee's work.

25. Mr. VIDAS endorsed Mr. Lamptey's comments.

26. The CHAIRMAN suggested that Mr. Banton, as Rapporteur, should incorporate the views expressed by Mr. Lamptey and Mr. Aboul-Nasr in the Committee's report to the General Assembly, following previous procedure. Although the Committee could not go against the States parties' decision, it was fully entitled to give its views.

It was so agreed.

27. The CHAIRMAN reminded the Committee that, among the urgent issues recommended by the Bureau for action by the Committee, there remained the question of information from members responsible for liaison with other human rights bodies.

28. Mr. RHENAN SEGURA informed the Committee that he had had no contact with the Committee on Economic, Social and Cultural Rights, and therefore had nothing to report.

29. Mr. WOLFRUM, reporting on his liaison with the Human Rights Committee, said that, in considering States' reports, the Human Rights Committee had frequently dealt with issues of relevance to the concerns of the Committee on the Elimination of Racial Discrimination.

30. In considering the report of Canada, members of the Human Rights Committee had inquired, under article 27 of the International Covenant on Civil and Political Rights, about the content of the self-government proposals being negotiated with Indian communities, how many members of Indian minority groups had been elected to the Senate or the House of Commons, and what legislative measures were envisaged by the Canadian Government for the recognition of linguistic rights. With reference to the revision of the Indian Act, Committee members had asked whether there had been difficulties arising from the fact that Indian rights had been restored to the first generation only and why the Indian Act had been excluded from the Canadian Human Rights Act. As in the Committee on the Elimination of Racial Discrimination, questions had specifically been asked about the events in Oka, why civil rights had been suspended without any parliamentary debate, and why the National Defence Act had been invoked rather than the Emergency Measures Act. The Human Rights Committee had expressed concern over the situation of Canada's minorities, especially its indigenous peoples, and expressed the hope that the Federal Government would continue its constitutional reforms to facilitate the indigenous peoples' movement towards autonomy.

31. When debating the report of Finland, members of the Human Rights Committee had asked whether the new self-government Act for the Aaland Islands had been enacted by Parliament. The content of the Act would certainly be of interest to the members of the Committee on the Elimination of Racial Discrimination when it considered the next report of Finland. The questions asked about the Finnish Romanies had been similar to those raised in the Committee on the Elimination of Racial Discrimination. With regard to the Samis, the members of the Human Rights Committee had asked why the Finnish authorities' approach concerning reindeer herding differed from that of Sweden. In Finland, reindeer herding was not just limited to a privileged fraction of the Samis. The Finnish response to that question was that the economic situation was different. When dealing with the next Swedish report, the Committee on the Elimination of Racial Discrimination might take that information into account.

32. When discussing the report of Spain, the Human Rights Committee had asked whether any changes might be introduced into the existing structure of the Spanish State in response to the claims of the Basque minority, whether languages other than Spanish could be used in the courts, and what measures had been taken to preserve gypsy culture and to encourage the use of their language. According to the records, those questions had not yet been answered.

33. The situation of ethnic groups had only been touched upon briefly when the Human Rights Committee had discussed the report of the Ukrainian Soviet Socialist Republic. The question had referred to the resettlement of Tatars and the use of the Hungarian, Polish, Russian and Tatar languages.

34. Regarding India, the Human Rights Committee had questioned the statement that "the reference to ethnic minorities does not apply to Indian society".

The Indian representative had replied that the Indian people formed a composite whole racially, and hence the concept of ethnic minorities and ethnic majority did not apply. At the same time, reference had been made to linguistic and religious minorities. The response had not fully satisfied the members of the Human Rights Committee.

35. The Human Rights Committee had not been satisfied with the information provided by Sweden on the Sami people, and the Swedish representative had promised detailed information on their situation in the next report.

36. The Human Rights Committee received a large number of human rights communications and had gained substantial experience in dealing with them. Communications which might be of interest for the further work of the Committee on the Elimination of Racial Discrimination included communication No. 413/1990, in which several citizens of South Tyrol claimed that the Italian Government had violated the right of self-determination by transgressing certain rights of the autonomous legislative and executive regional power of the province. The Human Rights Committee had declared the communication inadmissible, since it had not alleged the violation of individual rights. The content of the communication would, however, be of interest to the Committee on the Elimination of Racial Discrimination when it next discussed the report of Italy since it concerned the status of ethnic groups in northern Italy. Another very interesting communication had been No. 167/1984, submitted by the Chief of the Lubicon Lake Band and alleging the violation by Canada of the group's land and property rights and cultural identity. The Canadian Government had not accepted the Band as a small Indian group. The case yielded very interesting information about Canada's treatment of small Indian tribes.

37. In conclusion, since many of the questions dealt with by the Human Rights Committee were of direct or indirect concern to the Committee on the Elimination of Racial Discrimination, the latter should establish some kind of working relationship with the Human Rights Committee.

38. The CHAIRMAN agreed that consideration might be given to Mr. Wolfrum's proposal for liaison with the Human Rights Committee. It would be most useful if Mr. Wolfrum could draw the Committee's attention to matters covered by the Human Rights Committee when the Committee on the Elimination of Racial Discrimination considered the reports of the relevant countries.

39. Mr. ABOUL-NASR requested further clarification about the dissatisfaction expressed by the Human Rights Committee with the report of Sweden, and whether any action had been taken. He wished to know whether the Human Rights Committee's follow-up to the examination of the reports submitted to it differed from that of the Committee, and whether the latter could learn anything from the work of the former Committee. Finally, he asked what procedure might be adopted for recording the important information derived from the Human Rights Committee's consideration of States' reports for use by the Committee on the Elimination of Racial Discrimination in future.

40. Mr. WOLFRUM said that the Human Rights Committee's method of dealing with reports was similar to that of the Committee on the Elimination of Racial Discrimination, except that its final remarks were not recorded in the form of an assessment. With regard to the report of Sweden, the final wording had not

contained an expression of the Human Rights Committee's dissatisfaction, since the Swedish representative had undertaken to provide further information on the Samis.

41. The methods of work of the two Committees was similar when it came to considering States parties' reports, although the Human Rights Committee was perhaps at some advantage in terms of the amount of information it received, since its mandate was broader. The real difference lay in the consideration of communications, of which the Human Rights Committee received a large number. It had developed considerable experience over the years and received a vast amount of additional information. With regard to the procedure to be followed in bringing information obtained from the Human Rights Committee to the attention of the Committee on the Elimination of Racial Discrimination, he would certainly be willing to submit the information to the Committee in writing and update it as further information became available, but he pointed out that such information would necessarily be filtered, and suggested that documents of direct relevance to the Committee should be distributed to all members of the Committee.

42. Mr. BANTON, reporting on his liaison with the Committee on the Elimination of Discrimination Against Women, said that that Committee had not yet appointed a member to liaise with the Committee on the Elimination of Racial Discrimination. That Committee's draft report, forwarded in response to his request for information, contained little information of relevance to the work of the Committee, but he drew attention to a point of interest concerning its working methods, namely, the existence of a pre-sessional working group to identify issues to be taken up by reporting States.

43. Mrs. SADIQ ALI, reporting on her liaison with the Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid, said that she had had no direct contacts with the Group, since it was only due to meet in January 1992. On the basis of documentation she had obtained from the Secretariat, however, she was able to report to the Committee on the relationship between its work and that of the Committee under article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Group of Three dealt mainly with the identification of persons and transnational corporations, on which she would not elaborate for want of time. The Group, reporting to the Commission on Human Rights at its forty-seventh session, had said that only two States parties had submitted their views on the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa and had called for all States parties to do likewise. The Group of Three faced the same problems as the Committee in regard to the submission of reports. As at 3 December 1990, some 180 reports were overdue and some had not been drafted in accordance with the general guidelines. Only 88 States were parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid. At the 1991 session, only two reports had been received, as compared to the average of 10 reports per year received in previous years.

44. The Committee on the Elimination of Racial Discrimination had expressed international solidarity with the peoples struggling against apartheid in South Africa, under article 3 of the Convention. It had worked to maximize South African diplomatic and ideological isolation at the risk of being

criticized as going beyond its mandate. It considered the lifting of sanctions premature. Article IV (b) of the International Convention on the Suppression and Punishment of the Crime of Apartheid was related to article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination with regard to the implementation of preventive measures. Similarly, article V of the former Convention contemplated the establishment of an international penal tribunal having jurisdiction with respect to the violations specified in article II. The legal punishability of offences in both articles II and V were related to article IV of the International Convention on the Elimination of All Forms of Racial Discrimination. However, whereas the latter article was mandatory, in the case of the anti-apartheid Convention, penal action was applicable only to those States parties that had accepted the jurisdiction of such a tribunal. In fact, as at 1990, the tribunal had not yet been established. The methodology of work of the Committee and the Group of Three was similar in the presentation and examination of reports.

45. It was imperative that, when raising questions on apartheid under article 3 of the Convention, the Committee should request States parties to ratify the International Convention on the Suppression and Punishment of the Crime of Apartheid. It could ask questions on the role of transnational corporations working in their territories and request them to cease their operations in South Africa. Under article 7, questions might be raised on the role of the media, teaching and education, action taken to sensitize officials and create greater awareness of the anti-apartheid Convention, and on anti-apartheid organizations in the State party. The Committee should also continue to appeal to States parties not to relax sanctions, thus supporting the people of South Africa in their legitimate struggle for freedom and equality. It should also ask for information on the assistance given to national liberation movements in South Africa. It should be remembered that with the dismantling of apartheid the evils of the system would not disappear from the hearts and minds of those who had practised it.

46. Mr. YUTZIS, reporting on his liaison with the Commission on Human Rights, said that he had had contact with the secretariat of the Commission, since the Commission itself was not due to meet until February-March 1992. The Commission was a complex body and worked very differently from the Committee or other human rights bodies. He was in the process of drawing up a list of topics and items dealt with by the Commission that were of particular interest to the Committee, on the basis of information and communications received by the Commission on a particular State, such as Canada, and also on the basis of adopted draft resolutions dealing with specific subjects, notably those which would be taken up by the Commission at future sessions. Iraq and Israel were among the items thus scheduled for consideration. A substantial amount of useful information was available that was directly or indirectly relevant to the Committee's work. He proposed to collect the information for submission to the Committee.

47. In addition, the Committee could usefully keep itself informed of certain ongoing questions dealt with by the Commission, taking into account the political scope of the Commission's mandate. He was thinking, in particular, of the work carried out by its working group on minorities. Whether or not he

continued to be a member of the Committee, he believed that the Committee should maintain liaison with the Commission and be informed of its deliberations at its forthcoming session on issues of relevance to the Committee.

48. Mr. VIDAS, reporting on his contact with the Committee Against Torture, said that it had held its fifth session in November 1990 and its sixth in April/May 1991. There were 55 States parties to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of whom 25 had recognized the Committee's competence to review individual communications against them. States parties were obliged to submit reports every four years. The fifth and sixth sessions had considered reports from Algeria, Chile (an additional report, because the Committee had been dissatisfied with the original report submitted by the military Government in 1989), Ecuador (from which the Committee had requested an additional report), Finland, Greece, the Netherlands, Panama, Spain and Turkey. It had discussed a draft Optional Protocol to the Convention submitted by Costa Rica to the Commission on Human Rights. The Optional Protocol provided for a universal system of visits by experts to places of detention. The Committee had supported the draft in principle, although it had expressed doubts about whether such universality could be achieved. It had decided to defer its decision until it had learnt the reaction of the Commission on Human Rights.

49. Mr. de GOUTTES reminded the Committee that, following a report by a member of the European Parliament, Mr. Glyn Ford, on racism and xenophobia, he had been asked to make contact with the Parliament. He had been in communication first with a representative of its information bureau and had been informed that a parliamentary group on racial discrimination had been set up as a result of the report. He had been invited to attend its session in October 1991, when progress on the matter would be discussed. He therefore wished to know whether the Committee thought he should attend and, more generally, what should be the nature of the Committee's dealings with the European Parliament. He suggested that, in any case, a regular exchange of information through the secretariat would be worth while.

50. The CHAIRMAN felt that the suggestion was acceptable. He requested members' views on Mr. de Gouttes' first question.

51. Mr. ABOUL-NASR could see no objection to Mr. de Gouttes attending the meeting. He asked, however, whether the European Parliament would only provide the Committee with public documents, since he understood that the Parliament also dealt with restricted ones.

52. Mr. de GOUTTES, pointing out that the parliamentary group had only just been formed, said that an answer to that question could only be given after the session in October 1991.

53. Mr. YUTZIS said that liaison with other human rights bodies did not necessarily entail attending their meetings. He was not clear whether the Committee took the view that Mr. de Gouttes could or should attend the European Parliament meeting. He himself faced the same dilemma with regard to the Commission on Human Rights.

54. The CHAIRMAN recalled that, at the 898th meeting on 11 March 1991, the Chairman had stated that members should not participate in the deliberations of other human rights bodies because their attendance would be unconstitutional. It seemed to him, however, that if the discussions in the parliamentary group were to be informal, Mr. de Gouttes' attendance would be acceptable.

55. Mr. de GOUTTES explained that the group was a working group within the European Parliament, not a parliamentary group as such, although it met during the parliamentary session.

56. Mr. ABOUL-NASR considered it perfectly acceptable for Mr. de Gouttes to attend the meeting, on the understanding that he was not a formal delegate from the Committee. Informal contacts could only be welcomed.

57. Mr. de GOUTTES said that although he was alive to the possible risks involved, he thought that the benefits of his attending could be considerable. If the Committee preferred, however, he could decline the invitation but ask to receive relevant documents.

58. The CHAIRMAN pointed out that the European Parliament group did not fall into the category of a human rights body. He suggested that Mr. de Gouttes should be free to exercise his own judgement.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION (agenda item 4)

59. Mr. SCHMIDT (Communications Section, Centre for Human Rights) said that, following the Committee's consideration of communication No. 2/1989 on 18 March 1991, its conclusions had been transmitted to the State party and the author. There were no communications outstanding. One had been received, but had not been submitted to the Committee, because it required some clarification, which the Secretariat had requested. A "contact letter" had also been received, which did not meet the basic criteria for a communication. The author had been informed, but had not yet replied.

60. Mr. YUTZIS said he questioned whether the Committee should be dealing with communications, even in general terms, in open session. He was concerned that so few communications were received under article 14 and thought that the matter merited serious discussion.

61. The CHAIRMAN suggested that the Committee should take note of the information provided by the Secretariat and postpone further consideration of the item to the next session, without prejudice to the point raised by Mr. Yutzis.

It was so agreed.

OTHER BUSINESS (concluded)*

Joint meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of Racial Discrimination (concluded)

62. The CHAIRMAN said that at the joint meeting held that morning, Mr. Ferrero Costa, the Committee's representative, had express the hope that the two Chairmen would keep in touch. Since the Sub-Commission met only once a year in August, any contacts should be made immediately.

63. Mr. FERRERO COSTA said that the joint meeting with the Sub-Commission had been very profitable, in that it had fulfilled its purpose of beginning a dialogue. He thought it would be useful for the two Chairmen to meet before the end of the Committee's session. If a second joint meeting was to take place, a decision on the matter should be taken in the current year, otherwise it might be difficult to arrange. He thought it was important that the relationship should be continued.

64. Mr. YUTZIS said he had thought there would be more joint talks as a result of the working relationship that had been inaugurated. Such talks should not be general, but should follow a joint agenda. Specific proposals had already been made on suitable subjects for joint discussion.

65. The CHAIRMAN pointed out that the preparation of a joint agenda would be a considerable undertaking, perhaps more so for the Sub-Commission than for the Committee.

66. Mr. WOLFRUM said a joint agenda would only be necessary if there was a definite decision to hold a second joint meeting.

67. Mr. de GOUTTES said he was in favour of another joint meeting with the Sub-Commission. An agenda could be prepared at the Committee's next session.

68. Mr. AHMADU considered that it should be left to the Sub-Commission to decide whether it wished to maintain further contact with the Committee.

69. The CHAIRMAN said that no decision could be taken until the Committee had reached agreement on the course it wished to take.

Holding a press conference

70. The CHAIRMAN announced that the Secretariat had arranged for the Committee to hold a press conference the following day. He asked for suggestions on what aspects of the Committee's work attention should be focused.

71. Mr. BANTON said that it was important to ask journalists what information they wanted. He was not sure that the press releases on the Committee's proceedings met their needs.

72. Mr. VIDAS thought that the Chairman should inform journalists on the items under discussion in the Committee, a number of which would surely be of interest to them.

73. Mr. ABOUL-NASR suggested that the Chairman might repeat the introductory remarks he had made that morning at the joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

74. Mr. WOLFRUM agreed. The Chairman should indicate what States' reports had been considered and what conclusions had been adopted. He doubted whether the press releases were of any interest.

75. Mr. ABOUL-NASR said that no newspaper would print a reference to the fact that a State had not replied to the Committee's questions: the Committee's work did not lend itself to use by the media.

76. Mr. de GOUTTES said that it would be wrong to underestimate the importance of the press conference and the Committee should exploit its possible political impact. He agreed with Mr. Banton's proposal that journalists should be asked whether the press releases met their expectations and with the proposal by Mr. Vidas that they should be asked whether they wished to receive a list of items to be considered by the Committee.

77. Mr. GARVALOV suggested that the Chairman should explain the difficulties encountered by the Committee in assessing the situation in States that did not submit reports or send representatives.

78. Mr. YUTZIS suggested that some members of the Bureau should also be present to assist the Chairman, who should concentrate on the more recent work of the Committee and be prepared to respond to difficult questions that might be raised. The scope and limitations of the Committee should be made clear to the press as well as some of the issues involved with regard to the compliance with the Convention.

79. The CHAIRMAN said he assumed members of the Committee agreed that, if the press requested such information, he should name those States that were not providing adequate information. He would be glad if the three Vice-Chairmen and the Rapporteur could accompany him. The press conference was open to all the members of the Committee. One of the Vice-Chairmen should be ready to give brief information on each of the country reports and on the number of States which had not reported.

The meeting rose at 6.10 p.m.

CERD/C/SR.935
23 August 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 935th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 August 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Fifth and sixth periodic reports of Israel (continued)

Submission of reports by States parties under article 9, paragraph 1, of the Convention (concluded)

Report of the Committee to the General Assembly at its forty-sixth session under article 9, paragraph 2, of the Convention

Draft decision by the Committee

The meeting was called to order at 3.40 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Fifth and sixth periodic reports of Israel (CERD/C/192/Add.2) (continued)*

1. The CHAIRMAN recalled that, in the absence of a consensus, the Committee had postponed discussion of its conclusions on the report of Israel. It now had before it a revised text, prepared by Mr. Yutzis, the country rapporteur, after consultations with members of the Committee.

2. Mr. BANTON said that it was inappropriate at the current stage to include in the Committee's conclusions any reference to Israel's accession to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or to the International Covenant on Civil and Political Rights, since the Committee had merely been informed by the Israeli representative that a bill to that effect had been introduced in Parliament. He had other reservations about the text. The Committee must be seen to be acting equitably in its consideration of reports, and the draft conclusions on Israel, as they stood, would not be interpreted as meeting that requirement. Moreover, they would have no impact on the situation in the occupied territories, upon which attention should be focused. The Committee should include in its statement on those territories a reference to the remarks made by the Israeli representatives and an explanation of why it considered them unsatisfactory.

3. The CHAIRMAN, speaking in his personal capacity, noted that the draft began by stating that the Committee expressed its appreciation for its continuing dialogue with the Government of Israel. He was not sure whether the Committee expressed its appreciation for its continuing dialogue with other countries. He suggested that further consultations should be held on the text by Mr. Aboul-Nasr, Mr. Banton, Mr. Yutzis and Mr. Wolfrum.

It was so agreed.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 2) (concluded)

Revised general guidelines

4. Mr. BANTON said that two points had been overlooked by Mr. Wolfrum, Mr. Ferrero Costa and himself in their consultations on the revised general guidelines. Firstly, the Committee had agreed that a request should be made for the inclusion of demographic data. Secondly, at its thirty-ninth session, the Committee had approved a recommendation concerning the definition of a minority, and that was relevant to the advice given to States on the preparation of their reports. Therefore, it had been the intention of the group of three to propose that whenever the Committee agreed upon a general recommendation relative to reporting, it should be added to the printed version of the guidelines when that document was reissued.

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* Resumed from the 931st meeting.

5. The CHAIRMAN said that consideration of that question would be pursued later.

Appointment of country rapporteurs

6. Mr. BANTON, Rapporteur, announced the appointment of the following country rapporteurs: Mr. Lamptey: Cape Verde and Zambia; Mr. Ahmadu: Lesotho and Burkina Faso; Mr. Lechuga Hevia: Solomon Islands and Bolivia; Mr. de Gouttes: Lao People's Democratic Republic, Viet Nam and Costa Rica; Mr. Wolfrum: Greece; Mr. Banton: Botswana; and Mr. Ferrero Costa: Belgium. If Mr. Ferrero Costa was not re-elected, it would be necessary to find a substitute. Country rapporteurs still needed to be appointed for Somalia, St. Vincent and the Grenadines, El Salvador and Papua New Guinea.

7. He suggested that, in writing to those States, the Chairman should use a wording that was virtually identical to that of the letter sent at the thirty-ninth session, but with the insertion of a sentence stating that, in reviewing implementation in the country concerned, the members of the Committee, as independent experts, would have access to "all other available sources of information, governmental and non-governmental".

8. Mr. ABOUL-NASR thought that reference to the Committee's use of other sources of information, including non-governmental organizations, would cause many problems. The Committee should not appear to be threatening States parties.

9. Mr. WOLFRUM agreed that the Committee should not threaten States parties, but nor should it give the wrong impression. As the letter stood, it appeared as if the Committee reviewed the implementation of the Convention solely on the basis of a country's most recent reports and the discussions on them.

10. Mr. BANTON, Rapporteur, suggested that, as an alternative to his proposed insertion, a reference might be included to the Committee's decision 1 (XL).

11. In response to a proposal by Mr. de GOUTTES, the CHAIRMAN suggested that further discussion should be postponed until the Committee had a text before it.

It was so agreed.

Question of reminders to be sent to States

12. The CHAIRMAN noted that there were no comments on that question.

Draft letter from the Chairman to States parties with regard to the Committee's consideration of the situation in non-reporting States

13. The CHAIRMAN invited comments on the draft letter the Committee had before it.

14. Mr. VIDAS, supported by Mrs. SADIQ ALI, said that the second paragraph was not clear and amounted to a repetition of what had already been stated in the previous letter. Reference must be made to the conclusions reached by the Committee following its consideration of a country's report.

15. Mr. FERRERO COSTA, supported by Mr. de GOUTTES, said he was in favour of retaining the text as it stood. It would be preferable to attach the relevant summary records of the discussion. The letter would be clearer if the order of the second and third paragraphs were reversed.

16. The CHAIRMAN said that he would reverse the order of the second and third paragraphs and would include in the body of the text a specific reference to the Committee's conclusions on each report.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 7)

17. The CHAIRMAN said the Committee had before it a draft Letter of Transmittal addressed to the Secretary-General, to accompany its report to the General Assembly. He pointed out that, as the Committee had agreed, the fact that it had held two sessions during 1991 had been highlighted.

18. Mr. FERRERO COSTA suggested that it would be more effective if the reference to the holding of two sessions were placed at the beginning of the paragraph concerned. He also thought it would be more positive if, before mentioning overdue reports, the letter stated that the Committee had dealt with a given number of reports. It was important to stress that some reports had been submitted.

19. Mr. de GOUTTES, agreed. He pointed out that one State submitting a late report - Côte d'Ivoire - had sent a delegation, which showed that the Committee's approach had produced a positive result.

20. In reply to a question by Mr. AHMADU, Mr. HOUSHMAND (Representative of the Secretary-General) said that letters had been sent to 13 States, of whom 5 had replied. Belgium had promised to prepare a report for the end of 1991 for examination at the next session and had therefore requested that consideration of its earlier reports should be deferred. The Committee had agreed to the Belgian request. Togo, Guinea and Zaire had also requested deferment, but the Committee had not acceded to their request. It had considered their earlier reports and had sent those States the summary records of the meetings at which the reports had been discussed to help them prepare new ones. The Permanent Mission of the Bahamas in New York had held out hope of a report being submitted, but since it had not been, the country's earlier reports had been considered.

21. Mr. BANTON, Rapporteur, thought that since the Letter of Transmittal was intended to draw attention to the main features of the Committee's work, it would be more appropriate to restrict references to individual countries to the body of the report.

22. Mr. AHMADU said it had been his understanding that the sentence referring to sources to be used in examining reports was to be deleted.

23. Mr. ABOUL-NASR agreed. The Committee as such had taken no formal decision on its use of sources, which would amount to an amendment of article 9 of the Convention, but had merely agreed that its members, as independent experts, could draw on various sources for their own information.

24. The CHAIRMAN reminded the Committee of its decision that the Committee will continue to make its suggestions and general recommendations on the basis of the examination of reports and information received from States parties as laid down in article 9, paragraph 2, of the Convention.

25. Mr. ABOUL-NASR, supported by Mr. WOLFRUM, said the fourth paragraph of the letter, which stated that the concluding observations were formulated by the Committee as a whole, should be deleted or amended to state that the observations would be agreed by consensus. The existing text implied that one member could exercise a veto over the Committee's decisions.

26. Mr. AHMADU agreed. There might in future be cases where members would not agree, in which case a majority decision should prevail.

27. Mr. BANTON, Rapporteur, said that the paragraph was significant as marking a shift in the Committee's procedures.

28. The CHAIRMAN took it that the proposal to replace the words "as a whole" by "by consensus" was acceptable. He also wondered whether the paragraph should be expanded to include a sentence about the Committee's wish to keep itself informed and maintain contacts with other human rights bodies.

29. Mr. AHMADU suggested that the paragraph dealing with the meeting with the Sub-Commission might be amplified by a sentence on the following lines: "We met to identify common concerns and to exchange views."

30. Mr. ABOUL-NASR said he was not sure whether a decision to hold further meetings had actually been taken. He suggested amending the final sentence to state that further contacts and exchanges of information were envisaged.

31. The CHAIRMAN said that a revised version of the Letter of Transmittal would be submitted to the Committee for consideration.

DRAFT DECISION BY THE COMMITTEE

32. The CHAIRMAN drew the Committee's attention to the following draft decision, which had been circulated to its members:

"The Committee on the Elimination of Racial Discrimination,

"Aware of the decision of the States parties about the place of its meetings,

"Recalling that according to article 10, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination, 'the meetings of the Committee shall normally be held at United Nations Headquarters',

"1. Draws attention to the Committee's experience at its fortieth session when many States were unable to arrange representation at the consideration of their reports by the Committee;

"2. Reiterates its view that the March meeting should be held at United Nations Headquarters; and

> "3. _Observes_ that meetings in New York should improve the supply of information which competent bodies of the United Nations have to furnish the Committee in terms of article 15, paragraph 2 (b)."

33. _Mr. LAMPTEY_ said it was for the Committee to decide when and where it would meet, the only constraint being the availability of conference services. It was up to the States parties, meeting in New York after the next session of the General Assembly, to decide on the financial implications of holding a spring session of the Committee in New York, taking into account the Committee's recommendations.

34. Paragraph 1 of the draft decision should be amended to reflect the fact that the number of States parties represented in Geneva was limited, whereas almost all had representation in New York.

35. _Mr. ABOUL-NASR_ proposed an amended version of the operative paragraphs of the draft decision. The existing paragraph 3 would become paragraph 2 but would be otherwise unchanged. Paragraph 1 would read:

> "1. _Draws attention_ to the Committee's experience, particularly at its fortieth session, when many States were unable to arrange representation at the consideration of their reports by the Committee due to the limited number of permanent missions in Geneva."

The new paragraph 3 would read:

> "3. _Decides_ that its future March meetings should be held at United Nations Headquarters and its August meetings in Geneva."

36. _The CHAIRMAN_ said that in earlier years the extra cost of holding a session in New York rather than Geneva had been in the region of $50,000. The Under-Secretary-General for Human Rights could be asked to provide updated figures for the financial implications of such a session.

37. _Mr. ABOUL-NASR_ said that he agreed with the view expressed by Mr. Lamptey with regard to the Committee's prerogatives in deciding the date and venue of its sessions.

38. _The CHAIRMAN_ drew attention to rule 25 of the Committee's rules of procedure, which concerned the financial implications of proposals.

39. _Mr. ABOUL-NASR_ said that the operative procedure should be that provided for in rule 2, which affirmed that the regular sessions of the Committee were to be convened at dates decided by the Committee in consultation with the Secretary-General. In addition, rule 5 affirmed that the Committee might designate a venue other than Headquarters for a session in consultation with the Secretary-General.

40. _Mr. LAMPTEY_ said that he agreed with the previous speaker, and pointed out that, if financial considerations were to be the determining criterion, some thought might be given to the enormous sums involved in holding seminars, which, although undoubtedly important, could scarcely be regarded as taking precedence over the work of the Committee itself.

41. Mr. de GOUTTES suggested that the Bureau might first examine the question in order to achieve an initial consensus.

42. Mr. ABOUL-NASR said that if there were no objections to the draft text, with the amendments he had proposed, a Bureau meeting could be avoided.

43. Mr. GARVALOV said that it should not be taken for granted that if the Committee met in New York, all States parties with diplomatic representation in New York would send a representative to the Committee. Furthermore, if rule 25 of the rules of procedure were applicable when the Committee met in New York, it should also be applicable when it met in Geneva. It was therefore more appropriate to refer to rule 5 in the matter under discussion.

44. Mr. AHMADU, referring to Mr. Lamptey's statement, reminded the Committee that it had received guidance from the Secretariat when the question of the venue of sessions had arisen previously. Referring to the draft text before the Committee, he expressed reservations about the use of the word "Decides" proposed by Mr. Aboul-Nasr.

45. The CHAIRMAN said that it was his duty as Chairman to confirm the applicability of rule 25. The Committee was, however, master of its own procedure, and he would defer to the majority view.

46. Mr. HOUSHMAND (Representative of the Secretary-General) said that, taking into account the previous decision adopted by the meeting of States parties about the venue of the Committee's sessions and rule 25 of the rules of procedure stipulating that the Committee should be informed of the financial implications of any proposal involving expenditures, a decision such as that contained in the draft text would require approval by the General Assembly in regard to the additional cost, if any, of holding future sessions in New York. In that regard, he pointed out that the secretariat of the Committee was located in Geneva. He could provide an estimate of any additional cost before the end of the session if the Committee wished to defer its decision until then.

47. Mr. ABOUL-NASR pointed out that, under article 10, paragraph 4, of the Convention and rule 5 of the rules of procedure, the normal procedure was for the Committee's meetings to be held in New York, which meant that the question of financial implications should not arise. He was merely seeking to apply the Convention and the rules of procedure, particularly as it was in the interests of the Committee's work to revert to the normal practice.

48. Mr. HOUSHMAND (Representative of the Secretary-General) explained that, under article 8, paragraph 6, of the Convention, States parties were responsible for the expenses of the members of the Committee while they were in performance of Committee duties. All other expenses concerning the servicing of Committee meetings were met from the United Nations regular budget, and that required a General Assembly decision. Under rule 25, the Committee must be informed of any additional cost involved in any decision it took; it should also be apprised of the procedure to be followed if the decision was to be implemented as the Committee wished.

49. Mr. VIDAS, while agreeing that the Committee might await an estimate of the additional cost, said he shared Mr. Aboul-Nasr's interpretation of the Convention as meaning that the holding of sessions in Geneva was in fact contrary to the provisions of the Convention and to previous practice.

50. Mr. ABOUL-NASR pointed out that when the Committee had met in New York in the past, there had been no question of informing it of the relevant financial implications; since that was the statutory practice, sufficient allowance should have been made in the regular budget.

51. Mr. HOUSHMAND (Representative of the Secretary-General) explained that the reason why the Committee had not been asked to consider the financial implications at the time was that the secretariat of the Committee had been situated in New York, whereas it was now situated in Geneva. For the Committee's information, the Fifth Committee of the General Assembly had interpreted "United Nations Headquarters" as meaning the office where the secretariat of a committee was situated, although the General Assembly could, of course, provide for exceptions to that interpretation.

52. Mr. AHMADU and Mr. FERRERO COSTA said that it would be preferable to defer a decision until the Committee received information on the financial implications.

53. Mr. YUTZIS said that, although he sympathized with the view that it would be desirable to hold meetings in New York because of the larger number of diplomatic missions there, the Committee should be very careful about the timing of its proposal and should perhaps defer it in order to avoid another negative response.

54. Mr. ABOUL-NASR suggested that the views of the various Committee members might be reconciled by changing the word "Decides" to "Recommends" in the second operative paragraph of the draft text.

55. The CHAIRMAN said he took it that the Committee agreed with that amendment and with the other amendments proposed by Mr. Aboul-Nasr.

The draft decision was adopted.

56. In response to a question by Mr. YUTZIS, the CHAIRMAN informed the Committee that he would write a letter to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in order to ascertain the Sub-Commission's intentions with regard to future meetings and liaison with the Committee.

57. He further suggested that Committee members should hold informal consultations about the proposed agenda for the Committee's spring session.

The meeting rose at 6.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 936th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (concluded)

Fifth and sixth periodic reports of Israel (concluded)

Provisional agenda of the Committee's forty-first session

Report of the Committee to the General Assembly at its forty-sixth session under article 9, paragraph 2, of the Convention (continued

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (concluded)

Fifth and sixth periodic reports of Israel (CERD/C/192/Add.2) (concluded)

1. Mr. BANTON (Rapporteur) read out the following compromise text prepared by the Group of Four for the conclusions on the reports of Israel:

> "The Committee recorded that the Government of Israel had undertaken to continue a dialogue with the Committee. It took note of the declaration made by the representative of the reporting State that Israel had ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (although at the time of writing no instrument of ratification had been deposited with the Secretary-General of the United Nations). The Committee regretted that the report did not follow the guidelines on the form and content of reports of States Parties and the demographic data provided was insufficient.
>
> "The Committee reiterated that the Government of Israel had implemented in the Occupied Territories neither the Geneva Convention Relative to the Protection of Civilian Persons in Time of War nor the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee expressed great concern about the situation in the Occupied Territories.
>
> "The Committee urges the Government of Israel to answer, in its seventh periodic report, all the questions asked and concerns raised during the consideration of its sixth and earlier reports."

2. The CHAIRMAN said that, in the absence of any objection, he would take it that members of the Committee approved the proposed text.

It was so decided.

3. Mr. BANTON (Rapporteur) read out the list of country rapporteurs who had been appointed for the next session; that list would appear as annex III to the report. He indicated that Ghana had submitted a report and that Greece was to do so shortly.

4. The CHAIRMAN considered the matter settled.

PROVISIONAL AGENDA OF THE COMMITTEE'S FORTY-FIRST SESSION

5. The CHAIRMAN said that, in the absence of any objection, he took it that the Committee approved the inclusion, in the provisional agenda of its next session, of organizational and related matters, the question of the World Conference on Human Rights and that of information concerning the work of other bodies dealing with human rights.

It was so decided.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 7) (CERD/C/40/CRP.1 and Add.1 to 19 and CERD/C/40/CRP.2, Add.1 and Add.2) (continued)

Document CERD/C/40/CRP.1

6. Mr. BANTON (Rapporteur) paid tribute to the members of the Secretariat and to those who had drafted the report for their valuable assistance. As certain passages in the draft report were not identical, word for word, with the text that had been approved by the Committee, he invited members to make any changes they considered necessary.

7. Referring to the document under consideration, he said that paragraph 7 would have to be amended to ensure that it accurately reflected the participation of members in the Committee's fortieth session.

8. The CHAIRMAN, speaking on behalf of the Committee, thanked the Secretariat and those who had drafted the text for their help in the preparation of the report.

9. Mr. ABOUL-NASR pointed out that, contrary to what was stated in paragraph 9, representatives of the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) had not attended the Committee's sessions. He therefore proposed the deletion of the last part of the sentence.

10. Mr. BANTON suggested that it might be better to end the sentence with the words "both organizations were invited at the sessions of the Committee, but did not do so.".

CERD/C/40/CRP.1, as a whole, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.1

11. Mr. de GOUTTES proposed the addition of the following sentence to the end of paragraph 5 in order better to reflect what the Committee had decided: "The Committee also made one of its members responsible for liaising with the Parliament of the European Communities".

12. Mr. YUTZIS, referring to the second sentence of paragraph 5 of the Spanish text, proposed that the verb "sería", which was in the conditional tense and therefore extremely ambiguous, should be replaced by the words "consiste en".

13. Mr. BANTON proposed that the same change should be made in the English text by replacing "would be" by "is".

Document CERD/C/40/CRP.1/Add.1, as amended, was adopted.

Documents CERD/C/40/CRP.1/Add.2 and Add.3

14. Mr. YUTZIS considered that paragraph 6 - at least in the Spanish text - was extremely confusing and imprecise.

15. Mr. BANTON said that chapter III of the report was simply a collection of quantitative data which were without much appeal to the reader and which might therefore be embodied in an annex to the report. He expressed the hope that, at their next session, the chairmen of the bodies established under international instruments would consider the possibility of devising a new model for the presentation of reports. As for the point made by the previous speaker, he said delays in submission by individual States could be determined simply by consulting the table of reports received during the period under consideration.

16. Mr. YUTZIS said that paragraph 6 of the Spanish text was illogical and suggested it might be better to start the second sentence with the words "Todos los demás informes ...".

17. Mr. BANTON said that, in his view, the word "all" in the English text was superfluous and could be deleted.

It was so decided.

18. Mr. YUTZIS, referring once again to paragraph 6, said that in the Spanish text it was stated that 22 of the 23 reports had been submitted on time whereas, according to the following sentence, they had been submitted after a delay ranging from a few weeks to over several years; there was something inconsistent about those two statements.

19. The CHAIRMAN said that there must be an error in the Spanish since the English text referred to reports that had not been submitted. He therefore requested that the necessary correction should be made to the Spanish text.

20. Mr. BANTON, referring to subparagraph 2 of paragraph 15, proposed the deletion of the words "might be" and "so as to avoid duplication".

21. The CHAIRMAN took note of that proposal.

22. Mr. GARVALOV noted that the word "assessment" was employed in subparagraph 4 of paragraph 15, whereas elsewhere the term "concluding observations" was used. He therefore proposed the replacement of "assessment" by "concluding observations".

23. Mr. de GOUTTES had also observed that the terms "observations finales" or "conclusion" were used in the French text. He proposed that uniform terminology should be adopted and that the word "conclusion" should be employed in all documents relating to the draft report.

24. Mr. WOLFRUM supported the proposals made by Mr. Garvalov and Mr. de Gouttes.

25. The CHAIRMAN took note of the proposals that had been made.

26. Mr. ABOUL-NASR noted that paragraph 15 failed to mention the Committee's main function, which was to make suggestions and recommendations of a general nature based on the examination of the reports and information received from States parties in accordance with article 9, paragraph 2 of the Convention. He therefore proposed that the Committee should consider how that shortcoming

could be corrected, for example by adding a subparagraph 5 indicating that the report could contain suggestions and recommendations.

27. Mr. BANTON said that the previous speaker's observation was well taken and proposed that it should be considered at an informal meeting.

28. The CHAIRMAN wished to draw a distinction between the recommendations and suggestions made by the Committee to States parties when it examined their reports and the recommendations and suggestions of a general nature that it brought to the attention of the United Nations General Assembly, the latter being set forth in another chapter of the report. He pointed out in that connection that chapter VII of the draft report (CERD/C/40/CRP.1/Add.19) contained a general recommendation concerning technical assistance.

29. Mr. LAMPTEY agreed that a fifth subparagraph should be added to the list of elements to be included in the section of the Committee's report concerning the consideration of a State party's report covering the recommendations and suggestions addressed to that State.

30. Mr. BANTON pointed out that paragraph 15 had been adopted by the Committee at its 891st meeting and that, if it was to be supplemented, a new paragraph would have to be added indicating what had been decided at another meeting.

31. The CHAIRMAN said that that matter could be taken up during informal discussions.

32. Mr. de GOUTTES associated himself with what had been said concerning Mr. Aboul-Nasr's observation. He also drew attention to a number of errors in the document submitted to the Committee. First of all, contrary to what was stated in paragraph 17, Yemen's report had not been considered by the Committee at its fortieth session. Moreover, it was stated in the first sentence of paragraph 20 of the French text that the Committee had continued to follow its practice of using country rapporteurs in the course of the examination reports submitted by States parties and of "diriger les débats du Comité à ce sujet". However, it was not his impression that the country rapporteurs had led the discussion and he therefore proposed that the last part of the sentence should be deleted.

33. The CHAIRMAN said that all reference to Yemen would be deleted in paragraph 17 and that the words "diriger les débats du Comité à ce sujet" in paragraph 20 would be deleted in the French text alone, since the problem in question did not arise in the English text.

It was so decided.

34. Mr. YUTZIS proposed, in order to attenuate the force of the Committee's value judgement of States parties which did not submit their reports on time, to replace the words "unacceptably high" near the end of the first sentence of paragraph 11 by the word "unduly".

It was so decided.

35. Mr. YUTZIS felt that the reports of States parties were not simply a principal source of information but the principal source, and therefore proposed the replacement in the fifth line of paragraph 14 of the English and Spanish texts of the indefinite article preceding the words "principal source of information" and "fuente principal de información" by the definite article.

36. The CHAIRMAN pointed out that the passage referred to by the preceding speaker had been taken from one of the Committee's previous reports and could not, therefore, be changed.

37. Mr. BANTON proposed that paragraph 16 should be amended to read as follows:

> "At both the thirty-ninth and fortieth sessions the Committee discussed technical assistance to be provided to the States parties with overdue reports. It adopted decision 3 (XXXIX) (see chap. VII below) and considered the model report prepared by the Rapporteur of the Committee with a view to assisting States parties with reporting difficulties. It decided to remit the document to the advisory services of the Human Rights Centre with the request that they try it out and report back to the Committee on their experience with it."

Paragraph 16, as amended, was adopted.

38. The CHAIRMAN read out a new paragraph 20 which would read as follows (CERD/C/CRP.1/Add.3):

> "At its thirty-ninth and fortieth sessions, the Committee discussed at several different meetings its practices relating to the use of information from sources other than State party reports. At the request of the Committee, the Secretariat prepared a paper on the subject that was discussed at the Committee's 924th meeting. During that discussion, some members expressed the view that comprehensive information was not always forthcoming from States parties and that material from non-governmental organizations in such circumstances was often of great value. The practice of other human rights treaty bodies in this regard reflected that reality. Other members noted, however, that certain organizations, as well as the press, could not always be relied upon to present an accurate view and that information should therefore be used judiciously. The Committee agreed that in regard to the use of information from different sources it could continue to make its suggestions and general recommendations on the basis of the examination of reports and information from States parties. At the same time, in examining the reports of States parties, members of the Committee, as independent experts, must have access to all other available sources of information, governmental and non-governmental. The Committee's decision on this matter is contained in chapter VII to the present report."

The new paragraph 20 was adopted.

39. Mr. BANTON explained that the former paragraph 20 would now become paragraph 21 and that the former paragraph 21 would become paragraph 23 if the Committee adopted a new paragraph 22 reading as follows:

> "As mentioned in paragraph 11 above, at its thirty-ninth session, the Committee identified 13 States which were seriously in arrears in submitting periodic reports. A letter was sent to notify them that the Committee would review the implementation of the Convention in their countries on the basis of the last report submitted. Four of these States requested a postponement. The Committee agreed to a postponement only in the case of a State which undertook to submit its outstanding reports before the end of 1991. Of the remainder, one State sent a representative to take part in the consideration; the other 11 did not. Of these 11, five have diplomatic missions in Geneva."

The new paragraph 22 was adopted.

Document CERD/C/40/CRP.1/Add.2, as a whole, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.4

40. Mr. de GOUTTES requested that the words "observations finales" on page 14 of the French text should be replaced by the word "conclusions".

The document, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.5 (Burundi, Cuba, Portugal)

41. Mr. SONG Shuhua, referring to the second sentence of paragraph 17, said that the expression "a vestige of the past" was confusing and that the first part of the sentence should therefore be deleted.

42. The CHAIRMAN proposed the addition of the word "seulement" between the word "pouvait" and the word "être".

43. Mr. YUTZIS, was of the view that the second sentence of paragraph 27 did not fully reflect the statement made by the Cuban representative as summarized in the summary record of the relevant meeting, and proposed that it should be amended to read as follows:

> "As regards the possibility of persons holding religious beliefs to become members of the Communist Party, the representative of Cuba stated that the matter had to be viewed in the context of Cuba's history, in that previous conditions had gradually been modified to the point where the possibility of allowing persons holding religious beliefs to become members of the Communist Party was at present envisaged."

44. Mr. ABOUL-NASR said that he agreed with the wording proposed providing that it corresponded to that of the summary record.

45. Mr. BANTON hoped that the second sentence of paragraph 27 would be retained in its present form because, as far as he could recall, it was a faithful reflection of what the Cuban representative had said.

46. The CHAIRMAN requested Mr. Banton to bring the second sentence of paragraph 27 into line with the summary record.

Document CERD/C/40/CRP.1/Add.5 was adopted subject to any changes that might be made in the second sentence of paragraph 27.

Document CERD/C/40/CRP.1/Add.6 (Uruguay, Malta, Canada)

CERD/C/40/CRP.1/Add.6 was adopted.

Document CERD/C/40/CRP.1/Add.7 (United Kingdom, Sweden)

47. Mr. ABOUL-NASR, referring to the conclusions reached after consideration of the Swedish report, was surprised that the Committee could say that "It was ... disturbing that the Government should have recently limited the number of immigrants and the resources devoted to their integration" (para. 43). All countries imposed restrictions on immigration, so why should Sweden be singled out?

48. Mr. WOLFRUM pointed out that Sweden, not only in its report but also through its representative, had expressed pride about its very friendly attitude to immigration. Yet that country had apparently introduced restrictions limiting the number of immigrants; that was a contradiction which should be mentioned in the report. The sentence in question, however, should be read in conjunction with the preceding one, in which the Committee appreciated the efforts made by Sweden on behalf of immigrants.

49. The CHAIRMAN agreed with Mr. Aboul-Nasr that all countries could not be expected to accept unlimited numbers of immigrants.

50. Mr. WOLFRUM emphasized that the sentence in question should be retained, particularly as it was a faithful reflection of the Committee's conclusions.

51. Mr. ABOUL-NASR proposed that, in order to meet Mr. Wolfrum's concerns, the sentence in question should be transferred to that part of the document dealing with the analysis of reports.

52. Mr. FERRERO COSTA pointed out that, as the sentence reflected one of the Committee's conclusions concerning the Swedish report, it should therefore not be removed from its context.

Document CERD/C/40/CRP.1/Add.7 was adopted.

Document CERD/C/40/CRP.1/Add.8 (Australia)

53. Mr. BANTON proposed that the third sentence of paragraph 7 should be amended to read as follows: "Members of the Committee wished to know, in particular about Aboriginal representation on the new Commission and similar bodies, why the Convention ...".

It was so decided.

54. Mr. WOLFRUM proposed the replacement of paragraphs 22 and 23 by the complete text of the Committee's conclusions that had been read out and adopted by consensus.

It was so decided.

55. Mr. FERRERO COSTA and Mr. GARVALOV proposed that, in general, the text of the Committee's conclusions concerning the consideration of country reports should correspond fully to that adopted by the Committee.

It was so decided.

56. Mr. ABOUL-NASR noted that the words "the Committee" had been used in the conclusions relating to the consideration of Australia's report, whereas in previous conclusions the term "members of the Committee" had been employed.

57. The CHAIRMAN proposed that "the Committee" should be used in the text of the conclusions and "members of the Committee" in the rest of the report.

58. Mr. YUTZIS supported that proposal which reflected the fact that the final conclusions had been adopted by consensus.

59. Mr. GARVALOV also considered that the conclusions should be presented on behalf of the Committee as a whole.

It was so decided.

Document CERD/C/40/CRP.1/Add.8, as amended, was adopted.

Documents CERD/C/40/CRP.1/Add.9 (Iraq, Bulgaria) and CERD/C/40/CRP.1/Add.11 (Zaire, Gambia, Côte d'Ivoire)

60. Mr. de GOUTTES, speaking on a point of order, said that document CERD/C/40/CRP.1/Add.9 which covered the consideration of the report of Bulgaria, for which he was Rapporteur, had not been distributed in French. Since he had to examine the text in detail, he proposed that consideration of the document in question should be deferred. He also proposed that consideration of document CERD/C/40/CRP.1/Add.11 should be postponed to the following meeting.

61. Mr. ABOUL-NASR said that the French text of those documents might not be ready for the Committee's following meeting and therefore appealed to Mr. de Gouttes to use his knowledge of English.

62. Mr. YUTZIS said it was understandable that, for practical reasons, the Secretariat was not always in a position to provide documents in the Committee's working languages in time. However, the principle of the equality of working languages must be respected so that no one was penalized.

63. Mr. de GOUTTES, referring to Mr. Aboul-Nasr's observation, said that in principle texts should be distributed simultaneously in all the Committee's working languages. Nevertheless, throughout the Committee's session he had displayed the greatest understanding in that respect by often working on texts in English. Nevertheless, a member of the Committee who had been appointed Rapporteur for one or more countries was entitled to expect that the texts which were of particular concern to him should, before they were adopted, be distributed in his own language.

Consideration of documents CERD/C/40/CRP.1/Add.9 and 11 was deferred to a later meeting.

Document CERD/C/40/CRP.1/Add.10 (Sierra Leone, Swaziland and Guinea)

64. Mr. AHMADU, said he was sorry he had not been present during the consideration of the reports of Sierra Leone, Swaziland and Guinea, and felt that the brevity of the Committee's reports on those three countries might defeat the purpose of the exercise which was to get States parties to conform to the provisions of the Convention.

65. The CHAIRMAN pointed out that the Rapporteurs appointed for Sierra Leone, Swaziland and Guinea had been obliged to examine very old reports and that the States concerned had not even sent representatives to the Committee. It was therefore difficult to say any more.

66. Speaking as a member of the Committee, he requested clarification of the words "the establishment of a new constitutional framework", since Sierra Leone "was expected to adopt a new Constitution soon" (para. 3).

67. Mr. LAMPTEY said that the Committee had simply reconsidered the report of Sierra Leone which had been submitted 17 years previously. It was not for the country Rapporteurs to submit the reports of States parties nor to give a general picture of the economic situation of countries; that was for States to do. In any event, the situation in Sierra Leone had certainly changed in 17 years.

68. Mr. BANTON noted that the discussions on the report of Sierra Leone had themselves been very brief since very few members had participated.

69. The CHAIRMAN proposed that Mr. Banton should refer to the relevant summary records in order to clarify the words "the establishment of a new constitutional framework" in Sierra Leone.

It was so decided.

70. Mr. YUTZIS said that, in the Spanish text, the wording of the last sentence of paragraph 8 suggested that the Committee was imposing United Nations technical assistance on the State in question.

71. The CHAIRMAN proposed that the wording should be made clearer by amending the beginning of the last sentence to read as follows: "The Committee also drew attention to the possibility of the State party requesting assistance ...".

It was so decided.

72. Mr. FERRERO COSTA noted that the Committee's decision to send a communication to the Governments of States parties was referred to explicitly in the case of Sierra Leone (para. 4) but only implicitly in the cases of Swaziland (para. 8) and Guinea (para. 12). It was his understanding that it had been explicitly decided to send a communication to the two latter countries.

73. The CHAIRMAN proposed that the same method used to record the Committee's decision in the case of Sierra Leone should be used to send a communication to the Governments of Swaziland and Guinea.

It was so decided.

Document CERD/C/40/CRP.1/Add.10, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.12 (Lebanon, Gabon, Togo)

74. Mr. AHMADU thought it was being rather too blunt, in the conclusions concerning Lebanon, to state that the Committee "noted with regret that the Government of Lebanon had not responded to its invitation to participate in its meeting and to furnish relevant information". A little more sympathy was in order in view of the situation prevailing in that country.

75. The CHAIRMAN recalled that it had been decided not to amend the conclusions.

76. Mr. WOLFRUM recalled that those conclusions had given rise to a long discussion during which it had been suggested that they should cover other elements as well; however, it was the present text that had been generally agreed to.

77. The CHAIRMAN noted that there were no conclusions concerning Gabon and Togo.

Document CERD/C/40/CRP.1/Add.12 was adopted.

Document CERD/C/40/CRP.1/Add.13 (Uganda, Fiji, Bahamas)

78. Mr. de GOUTTES felt it was rather weak, in the conclusions concerning Fiji in paragraph 11, simply to speak of "the apparent discrimination against Indians".

79. Mr. WOLFRUM pointed out that the relevant summary record referred to "possible" discrimination; that adjective had been used because, not having a report, the Committee had preferred to refrain from reaching a cut and dried conclusion.

80. Mr. FERRERO COSTA was of the view that the wording used in those conclusions was insufficient to express the concern of Committee members with regard to Fiji's reservations to the Convention. The discussion had revealed that those reservations were valid because there had been no objection from other States but that the Committee had not deemed them appropriate and hoped that they would be withdrawn. The Committee should therefore suggest that Fiji should re-examine the possibility of withdrawing its reservations. Moreover, in paragraph 9 which also concerned Fiji it was insufficient to say "thereby institutionalizing the racial divisions in the country" (twelfth line). It was rather racial discrimination that was thus being institutionalized.

81. Mr. ABOUL-NASR, confirming Mr. Ferrero Costa's observation, recalled that members of the Committee had indeed not questioned the validity of Fiji's

reservations; it was rather their compatibility with the Convention that raised a problem. The words "the compatibility of Fiji's reservations with the Convention" should therefore be used.

82. Mr. FERRERO COSTA felt that that wording was better. However, he also hoped that something would be added in order to evoke the real problem that was raised.

83. The CHAIRMAN proposed that the point made by Mr. de Gouttes should be met by using the wording of the summary record and that made by Mr. Ferrero Costa by replacing the word "divisions" in paragraph 9 by the word "discrimination". Another of Mr. Ferrero Costa's objections had already been partly overcome by the introduction of the words "compatibility ... with the Convention". Mr. Ferrero Costa should reach agreement with Mr. Banton, the Rapporteur of the Committee, on a final text for paragraph 11.

Document CERD/C/40.CRP.1/Add.13, as amended, and subject to the final wording to be agreed upon with the Rapporteur for paragraph 11, was adopted.

Documents CERD/C/40/CRP.1/Add.14 and 15

84. The CHAIRMAN announced that those two documents were not yet available in any language.

Document CERD/C/40/CRP.1/Add.16 (Consideration of communications under article 14 of the Convention)

Document CERD/C/40/CRP.1/Add.16 was adopted.

Documents CERD/C/40/CRP.1/Add.17 and 18

85. The CHAIRMAN announced that those two documents were not yet available in any language.

Document CERD/C/40/CRP.1/Add.19 (Decisions adopted by the Committee at its thirty-ninth session).

86. Mr. ABOUL-NASR suggested that the decisions referred to should include the one on the place of the next session.

87. The CHAIRMAN said that it would be mentioned in document CERD/C/40/CRP.1/Add.20 which was not yet ready. He recalled that, at its previous session, the Committee had decided that its 1992 spring session would be held at United Nations Headquarters, New York. The Rapporteur would ensure that that was correctly indicated.

Document CERD/C/40/CRP.2 (Annex I. A. States parties to the Convention as at 23 August 1991; B. States parties which have made the declaration under article 14, paragraph 1 of the Convention)

CERD/C/40/CRP.2 was adopted.

Document CERD/C/40/CRP.2/Add.1 (Annexes: II. Agenda of the thirty-ninth and fortieth sessions; III. Consideration by the Committee of reports submitted by States parties under article 9 of the Convention)

88. Mr. BANTON pointed out that some of the entries in annex III concerning country Rapporteurs should be corrected. For example, Mr. Ferrero Costa had not been country rapporteur for Belgium, nor Mr. Foighel for Iraq. Moreover, it would be better in future if the reports examined by the Committee were to appear in the left-hand column and the names of rapporteurs in the right-hand column.

89. The CHAIRMAN proposed that the error mentioned by Mr. Banton should be corrected by the use of asterisks and appropriate footnotes. His other observation would be duly taken into account.

Document CERD/C/40/CRP.2/Add.1 was adopted subject to those reservations.

Document CERD/C/40/CRP.2/Add.2 (Annexes: IV. Documents received by the Committee on the Elimination of Racial Discrimination at its thirty-ninth and fortieth sessions, pursuant to decisions of the Trusteeship Council and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in conformity with article 15 of the Convention; V. List of documents issued for the thirty-ninth and fortieth sessions of the Committee; VI. Letter addressed by the Chairman of the Committee to the Ministers for Foreign Affairs of 13 States parties)

90. Mr. WOLFRUM pointed out that the letter reproduced in annex VI which was shortly to be sent to the ministers for foreign affairs of States parties which had not submitted their reports on time was slightly different from that sent in March for the same purpose. The two letters could thus be sent together.

91. Mr. BANTON supported that idea.

92. Mr. YUTZIS noted that, in the third and fourth sentences of the second paragraph of the letter in annex VI, the English text referred to the "review" of implementation of the Convention in countries whose reports were overdue whereas the word "revisión" was used in the Spanish text. The Spanish word expressed not so much the idea of review but rather of re-examination.

93. Mr. FERRERO COSTA, endorsing what Mr. Yutzis had said, proposed that the words "examinar nuevamente" and "nuevo examen" should be used in the sentences in question.

94. Mr. GARVALOV noted that the second paragraph of annex VI referred to article 9, paragraphs 1 and 2 of the Convention, in which the word "examination" was used.

Document CERD/C/40/CRP.2/Add.2 was adopted with the changes requested.

95. The CHAIRMAN said that the missing parts of the Committee's draft report to the General Assembly would be considered at the following meeting in the morning of 23 August 1991. He drew the Committee's attention to a draft

letter that he would address to the United Nations Secretary-General in transmitting the Committee's report on its thirty-ninth and fortieth sessions, as well as to another draft letter that he would send to the Governments of 11 States parties whose reports were overdue concerning the application of the Convention in those States which the Committee had examined on the basis of the last reports available and summary records of its deliberations (documents without symbol numbers).

96. Mr. BANTON suggested that the order of paragraphs 4 and 5 of the draft letter to the Secretary-General should be inverted, making the second sentence of the former paragraph 4 into a new separate paragraph. The word "view" in the second sentence of the former paragraph 6 should be in the plural.

97. The CHAIRMAN proposed that the draft letter to the Secretary-General should be amended in the way suggested by Mr. Banton. The draft letter to the Governments of 11 States parties was a revised text which incorporated all the suggestions made by members of the Committee; he read out the final text in order to avoid any misunderstanding.

The draft letters were approved.

The meeting rose at 1.05 p.m.

CERD/C/SR.937
5 December 1991

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 937th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

CONTENTS

Report of the Committee to the General Assembly at its forty-sixth session in accordance with article 9, paragraph 2, of the Convention (*concluded*)

Closure of the session

The meeting was called to order at 10.35 a.m.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION IN ACCORDANCE WITH ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 7) (CERD/C/40/CRP.1 and Add.1 to 20; CERD/C/40/CRP.2 and Add.1 and 2) (concluded)

1. The CHAIRMAN invited the Committee to continue its examination of the draft report to the General Assembly at its forty-sixth session; some of the documents comprising the draft that had previously not been available in some or all languages were at present before the Committee.

Document CERD/C/40/CRP.1/Add.9 (Iraq, Bulgaria)

2. Mr. de GOUTTES, recalling that he had been Rapporteur for Bulgaria, suggested that the word "particular" in the term "the interests of particular groups" in paragraph 22 should be deleted and the term itself possibly amended to read "the interests of groups of people".

3. Mr. BANTON suggested that the words "adopted by the National Assembly on 15 January 1990" should be added after the words "Declaration on the National Issue" in the second line of paragraph 20. Moreover, instead of "Although Bulgaria acknowledged the concept of a minority" at the beginning of the third sentence of paragraph 25, it would be better to say "Bulgaria did not use the concept of a minority". Moreover, he proposed that the words "the preparation of a new constitution and the adoption of a number of amnesty laws and laws on restoration of lands" at the end of the second sentence in paragraph 31 should be amended to read: "the adoption of a new constitution and a number of amnesty laws and laws on restoration of lands".

That part of document CERD/C/40/CRP.1/Add.9 concerning Bulgaria was adopted together with changes requested by Mr. de Gouttes and Mr. Banton.

4. Mr. de GOUTTES said he was uncertain whether the conclusions concerning Iraq set out in paragraph 11 really reflected the consensus. Personally he was unable to accept the words "and that first steps had been undertaken to improve the human rights situation in the country and, in particular, the situation of the Kurds and other ethnic groups" at the end of the second sentence. A statement of that nature could not be made on the basis of the information available to the Committee. It would be better to add wording at the end of that sentence reading as follows: "However, the Committee had not received the information enabling it to assess fully the human rights situation in Iraq and specifically that of the Kurds and other ethnic groups".

5. Mr. WOLFRUM pointed out that the conclusions to which the previous speaker had just referred had been drafted by a small group, with his consent, and then approved by the Committee. He also recalled that the Committee had decided not to change conclusions that had already been adopted in respect of States parties.

6. Mr. RESHETOV, referring to the second sentence of the conclusions concerning Iraq, recalled that he had objected to the reference to "the recent armed conflict", which suggested that the problems referred to had nothing to do with Iraq whereas in point of fact they were the result of its policy.

7. Mr. de GOUTTES said that if he had really agreed to the wording whose deletion he had requested he had possibly done so because it had not been clear to him in the English version. In any event, given the importance of the situation under review in Iraq, it should be possible to improve the text right up to the last moment.

8. Mr. GARVALOV drew attention to a number of differences between the text of the draft report and the summary record (CERD/C/SR.922) which contained the conclusions that had been used by the Rapporteur in preparing the draft report. For example, in the fifth line of paragraph 11, the word used in the summary record was "initiated" and not "undertaken" in connection with the measures to which the previous speaker had referred. In the third sentence, where it was stated that the Committee had not yet received the information which would enable it to assess the human rights situation in Iraq fully, the summary record did not contain the word "fully". He observed that it had been decided that the conclusions set out in the summary records should be reproduced word for word.

9. Mr. BANTON also noted that, if the wording of the summary record was to be used, the words "since Iraq is under an obligation to respect and to ensure to all individuals under its jurisdiction or control the rights recognized in the Convention" should be added after "2 August 1990" in the fourth sentence.

10. Mr. de GOUTTES emphasized that, if the Committee adopted the conclusions set out in paragraph 11, the objection he had just raised and possibly the objections of other members as well should at least be mentioned. That could be done by saying "certain members entered reservations ...". Personally he was unable to withdraw his objection for procedural reasons, since it was based on important reasons of substance.

11. The CHAIRMAN read out the assessment of Iraq's ninth and tenth reports proposed by Mr. Wolfrum, approved by the Committee and set out on page 2 of the summary record of the Committee's 922nd meeting (CERD/C/922). He requested the Committee to reproduce that text in the draft report; in doing so the observations of Mr. Reshetov, Mr. Garvalov and Mr. Banton would be taken into account. He also urged members of the Committee to refrain from requesting that reservations should be mentioned in the draft report in connection with the conclusions on Iraq. Personally he was not fully satisfied with those conclusions and other members of the Committee were certainly in the same situation; however, the debate must not be reopened and the Committee's decision should not be weakened.

12. Mr. ABOUL-NASR agreed that the entire text contained in the summary record that had just been read out by the Chairman should be reproduced. He too was not fully satisfied with that text but considered that it should be retained in order to reflect the consensus. If members of the Committee were of a different opinion, that fact would be reflected in the summary record of the current meeting.

13. Mr. WOLFRUM recalled that it was he who had drafted the text read out by the Chairman and that it was on that text that the Committee had reached agreement. It should therefore be included in the Committee's report to the General Assembly.

14. Mr. de GOUTTES said that, in a spirit of compromise, he would no longer insist that the reservations he had expressed should be mentioned in the Committee's report. However, he emphasized that the summary record of the current meeting should mention the fact that one or more experts had not shared the view reflected in the words "and that first steps had been undertaken to improve the human rights situation in the country and, in particular, the situation of the Kurds and other ethnic groups".

15. Mr. VIDAS recalled that, during the course of the discussion he had proposed that article 9 of the Convention should be applied in order to request Iraq to provide additional information; his position was therefore close to that of the previous speaker and should also be mentioned in the summary record.

16. The CHAIRMAN noted that Mr. de Gouttes had agreed to the retention, in the Committee's report of the wording to which he had objected. The summary record of the current meeting would reflect his objections as well as the proposal made by Mr. Vidas.

Subject to the Chairman's observations, document CERD/C/40/CRP.1/Add.9 was adopted.

Document CERD/C/40/CRP.1/Add.11 (Zaire, Gambia, Côte d'Ivoire)

17. Mr. de GOUTTES proposed the deletion of the word "critical" in the third line of paragraph 17 and the addition to the end of the last sentence of paragraph 28 of the words: "and took note of the intention of the Government of Côte d'Ivoire to submit a written report very shortly". He had emphasized that important point in his conclusions on the reports of Côte d'Ivoire.

18. Mr. AHMADU wondered whether the last sentence of paragraph 23 really reflected what had been asked of the Côte d'Ivoire delegation, since bodies such as the World Bank and International Monetary Fund were on the contrary urging African countries that produced cocoa and coffee to expand their exports of such products in order to increase their currency reserves.

19. After an exchange of views between Mr. AHMADU and Mrs. SADIQ ALI (who had put the question), and taking into account the way in which the question had been worded in the summary record of the 922nd meeting (CERD/C/SR.922), the Chairman proposed that the words "with a view to diminishing reliance on cocoa and coffee crops" should be replaced by "with a view to shifting from reliance on cocoa and coffee to food crops".

Document CERD/C/40/CRP.1/Add.11, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.14 (Mexico)

20. Mr. BANTON (Rapporteur), referring to paragraph 3, proposed the deletion of the words "In that connection" and their replacement by "Nor did it contain replies to questions raised during the consideration of the previous report". The following sentence would begin with the words "Members of the Committee ...".

Document CERD/C/40/CRP.1/Add.14, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.15 (Israel, Syrian Arab Republic)

21. Mr. GARVALOV said it was very difficult to approve chapters of the draft report without having the summary records of the corresponding meetings which reflected the discussions that had taken place. He was not against the adoption of the document but simply wished to point out that the Committee did not have before it all the summary records relating to its consideration of the reports of Israel.

22. The CHAIRMAN requested the Secretariat to make the relevant summary records available as soon as possible even if they contained errors of syntax, since only in that way would members be able to verify what had been said during the meeting.

Document CERD/C/40/CRP.1/Add.15 was adopted.

CERD/C/40/CRP.1/Add.17 (Consideration of copies of petitions, copies of reports and other information relating to trust and non-self-governing territories and to all other territories to which General Assembly resolution 1514 (XV) applies in conformity with article 15 of the Convention)

Document CERD/C/40/CRP.1/Add.17 was adopted.

CERD/C/40/CRP.1/Add.18 (Second Decade to Combat Racism and Racial Discrimination)

23. The CHAIRMAN informed the Committee that Mr. Heller (Mexico) had been chosen by the Sub-Commission on Prevention of Discrimination and Protection of Minorities as the person responsible for liaison with the Committee. He requested Mr. Banton to add a sentence in paragraph 7 indicating that Mr. Heller and Mr. Ferrero Costa had been appointed by the Sub-Commission and the Committee respectively to act as liaison officers between the two bodies.

24. Mr. BANTON took note of the Chairman's request and proposed that the first sentence of paragraph 14 should be amended to read as follows: "At the 913th meeting of its thirty-ninth session, the Committee considered ways in which the Convention and the Committee's work for the elimination of racial discrimination might be better publicized."

25. He also proposed that the last sentence of paragraph 11 should be replaced by: "The Committee agreed that the draft model legislation should be revised in the light of members' comments and reconsidered at its forty-first session."

26. Mr. YUTZIS, speaking on behalf of the Working Group that had been requested to examine the draft model legislation, approved that change. The Working Group had also been of the opinion that, at its next session, the Committee would need a more comprehensive view of the documents relating to that project.

Document CERD/C/40/CRP.1/Add.18, as amended, was adopted.

Document CERD/C/40/CRP.1/Add.5 (Part concerning Cuba)

27. Mr. BANTON read out the passage that the Chairman had requested him to prepare on the basis of the summary records. The second sentence of paragraph 27 would accordingly be replaced by the following two sentences:

> "Relations with the Vatican had changed, so that tensions with the clergy had become a thing of the past. Consideration was being given to the possibility that persons professing a religion might be eligible for membership of the Communist party, though questions would remain about their ability to subscribe to the principles of Marxism-Leninism."

Paragraph 27, as amended, was adopted.

CERD/C/40/CRP.1/Add.10 (Sierra Leone, Swaziland, Guinea)

28. Mr. BANTON proposed that the following two sentences should be added to the end of paragraph 3:

> "To reopen discussion on the basis of the previous report would scarcely be useful. It was more important to send a new communication to the State, accompanied by the record of the present and preceding sessions, and requesting information about constitutional and other developments in the country."

Document CERD/C/40/CRP.1/Add.10, as amended, was adopted.

29. The CHAIRMAN said that the Committee had completed consideration of its report to the General Assembly at its forty-sixth session.

30. At the invitation of the Chairman, Mrs. SADIQ ALI read out the following draft general recommendation she had drawn up in accordance with article 9, paragraph 2, of the Convention:

> "Having considered the practice of States parties concerning the implementation of the Convention on the Elimination of All Forms of Racial Discrimination;
>
> "Convinced of the necessity to further encourage the establishment of national institutions assisting in the implementation of the Convention;
>
> "Taking into account that article 14, paragraph 2, of the Convention addresses the establishment of Human Rights Commissions in the case that States parties have made a declaration in accordance with article 14, paragraph 1, of the Convention and wish to use the Commission as a clearing body;

> "Further taking into account that article 6 of the Convention obliges the States parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination;
>
> "The Committee with a view to further strengthening the implementation of the Convention recommends to States parties the establishment of Human Rights Commissions.
>
> "Such human rights commissions should serve all or several of the following purposes:
>
> > "To protect against discrimination and to protect civil and other human rights;
> >
> > "To systematically review the government policy toward human rights and to suggest improvements;
> >
> > "To monitor State legislative compliance with existing human rights law;
> >
> > "To educate the public about human rights issues with a view to promoting them; and
> >
> > "To assist the Government in the drawing up of reports to the United Nations human rights institutions.
>
> "The representatives of such institutions could be included in the government delegations which might intensify the dialogue between the Committee and the State party concerned."

31. The CHAIRMAN thanked Mrs. Sadiq Ali for that important recommendation which the Committee would consider at its next session.

32. Mr. WOLFRUM expressed the hope that, at the Committee's next session, indirect discrimination would be the subject of a separate agenda item. He would personally submit a draft recommendation on the matter at that time.

33. Mr. LECHUGA HEVIA supported Mr. Wolfrum's proposal.

34. Mr. BANTON said that, in the opinion of the Working Group consisting of Mr. Rhenan Segura, Mr. Wolfrum and himself, the standard directives concerning the first part of the reports of State parties should specify that demographic data should be more detailed and cover race, colour, ethnic origin and national origin; it could also be emphasized that such data need not

necessarily be derived from a census. The directives concerning the preparation of reports should also include all the general recommendations concerning such directives that the Committee had just adopted.

35. Mr. LAMPTEY pointed out that, as the Committee had already adopted its report, it could not take any decision.

CLOSURE OF THE SESSION

36. After an exchange of courtesies, the CHAIRMAN declared the session closed.

The meeting rose at 12.10 p.m.
